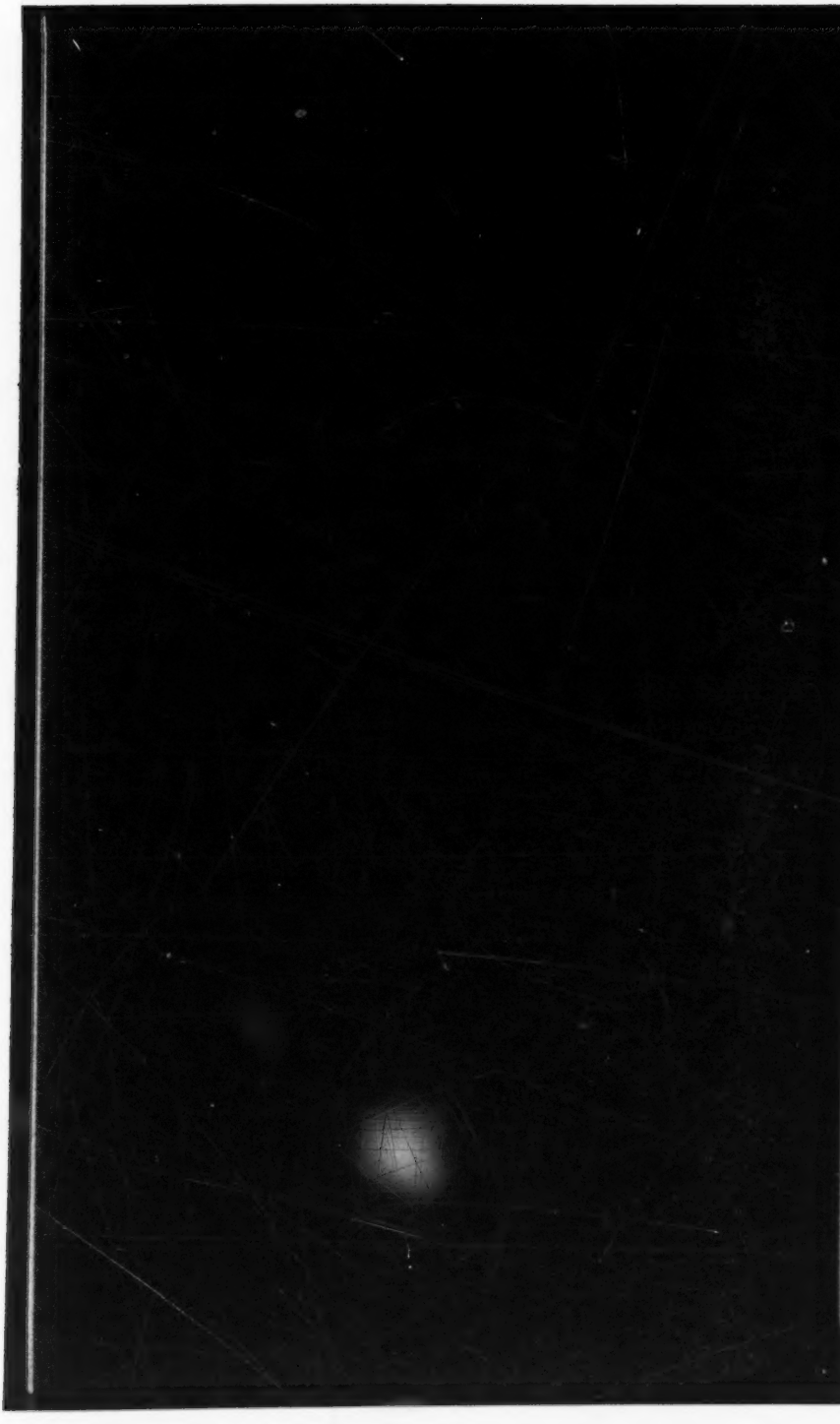

# INDEX.


| | Page. |
|---|---|
| Statement | 1 |
| Assignments of error | 16 |
| Argument | 17 |
| The general rule is that a lake or watercourse shown on the plat of survey is the real boundary, and that the patent conveys title to the water's edge and not merely to the meander line. But this court has on frequent occasions recognized exceptions to the rule, and we briefly call attention to these exceptions | 17 |
| We now come to the main cases in which this court has held that a patent to land bordering on a stream carries title to the water's edge | 20 |
| In the light of all the cases mentioned we maintain that the so-called Warren meander line forms the boundary of the patented areas and that the patents do not carry title to the water's edge | 22 |
| This court seems to be committed to the doctrine that a meander line to be binding must reasonably approximate the shore line | 27 |
| The fact that in *Mitchell* v. *Smale*, 140 U. S. 406, this court held that a patent embracing a fractional quarter containing only 4.53 acres, nevertheless operated to pass title to the water's edge and therefore to include an additional 25 acres, seems to have measurably influenced the Court of Appeals in deciding against the Government. It is submitted, however, that cases of this sort are not to be decided on a comparison of areas, but upon the fundamental proposition whether the meander line reasonably conforms to the margin of the lake | 28 |
| If the Court of Appeals was wrong in dismissing the bills of complaint, then it is submitted that the District Court was wrong in allowing the defendants credit for the cost of drilling the wells | 29 |


## CITATIONS.


| | |
|---|---|
| *Chapman & Dewey* v. *St. Francis*, 232 U. S. 186 | 18, 26 |
| *French-Glenn Live Stock Co.* v. *Springer*, 185 U. S. 47 | 18 |
| *Gauthier* v. *Morrison*, 232 U. S. 452 | 24, 27 |
| *Hall* v. *Abraham*, 44 Ore. 477 | 30 |
| *Hardin* v. *Jordan*, 140 U. S. 371 | 25 |
| *Horne* v. *Smith*, 159 U. S. 40 | 17 |
| *Lee Wilson & Co.* v. *United States*, 245 U. S. 24 | 19 |

*Llynvi Co.* v. *Brogden*, L. R. 11 Eq. 188..... 30
*Martin* v. *Porter*, 5 Mees. & W. 351..... 30
*Mitchell* v. *Smale*, 140 U. S. 406..... 21, 28
*Morgan* v. *Powell*, 3 Q. B. 278..... 30
*Niles* v. *Cedar Point Club*, 175 U. S. 300..... 17
*Producers Oil Co.* v. *Hanzen*, 238 U. S. 325..... 19, 26, 28
*Railroad Co.* v. *Schurmeir*, 7 Wall. 272..... 20, 22
*St. Clair* v. *Cash Gold Min. & Mill. Co.*, 9 Colo. App. 235..... 30
*Security Land & Exp. Co.* v. *Burns*, 193 U. S. 167..... 18
*United States* v. *McCutchen*, 238 Fed. 575..... 30
*United States* v. *Midway Northern Oil Co.*, 232 Fed. 619..... 30
*United States* v. *St. Anthony R. R. Co.*, 192 U. S. 524..... 30

# In the Supreme Court of the United States

OCTOBER TERM, 1922.

| | |
|---|---|
| UNITED STATES OF AMERICA<br>*v.*<br>C. W. LANE ET AL. | No. 160. |
| UNITED STATES OF AMERICA<br>*v.*<br>GULF REFINING COMPANY OF LOUISIANA | No. 163. |
| UNITED STATES OF AMERICA<br>*v.*<br>SOUTHWESTERN GAS & ELECTRIC COMPANY et al. | No. 162. |
| UNITED STATES OF AMERICA<br>*v.*<br>GULF REFINING COMPANY OF LOUISIANA. | No. 161. |

*APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.*

## BRIEF FOR THE UNITED STATES.

### STATEMENT.

These cases, with one other which was not appealed (*United States* v. *La Robadierre et al.*, District Court, No. 1164), were consolidated for trial in the District

Court. To reduce the size of the several transcripts it was stipulated that the record in *No. 160, United States* v. *Lane et al.*, should contain the testimony, master's report, opinion of the court, and other matters applicable to all of the cases, and that the records in the other suits should include only the pleadings, exhibits, and other things specially applicable thereto. When the cases were brought to this court another stipulation was entered into, to the effect, among other things, that all of the exhibits transmitted to this court in *No. 119, Jeems Bayou Fishing & Hunting Club et al.* v. *United States*, and which were offered in evidence and constitute part of the record in these suits, should be deemed and considered as a part of the record on appeal (*No. 160, 399*).

The pleadings in each case are substantially the same. The bills of complaint allege that prior to December 15, 1908, the United States was the owner, as a part of the public domain, of the respective tracts of land which were then unsurveyed, but which had thereafter been surveyed under the direction and with the approval of the Secretary of the Interior, as shown by a plat approved by the Commissioner of the General Land Office on March 28, 1917. It is alleged that in order to conserve the public interest the land was withdrawn from settlement, entry, or other form of appropriation by order of the President issued December 15, 1908, and that the withdrawal was ratified and continued in effect by another order

dated July 2, 1910. Alleging that defendants had drilled oil wells upon the tracts in violation of the withdrawals, plaintiff prayed for an injunction, discovery, accounting, etc. The tracts in suit lie between the traverse lines of Warren's survey of 1839 and the mean high-water mark of Ferry Lake, as established by the survey of Kidder, supervisor of surveys, approved March 20, 1917. Each lot was in place as high land when Louisiana was admitted into the Union, and in 1839, when the Warren survey was made.

The tracts in suit are situated in T. 20 N., R. 16 W. A body of water known as Ferry Lake lies partly within this township. The areas in question are lands lying between the so-called meander line of the 1839 survey and the mean high-water mark as it existed when Louisiana was admitted into the Union in 1812 and when the Warren survey of 1839 was made. The adjoining land, embraced in the Warren survey, was patented by the United States to various patentees, the defendants in some of the cases deraigning title from these patentees and in other cases not. The dates of these patents will be given later.

The lots in question were not, as the Government contends, included or described in the patents, and the United States has not parted with title. These lots are represented upon the plat made by Kidder, supervisor of surveys, known as the supplemental plat, approved by the Commissioner of the General Land Office on March 20, 1917.

As already stated, the township was surveyed in 1839 by Warren. In 1846 Morse, in adjusting the boundary line between Louisiana and the then Republic of Texas to the township, made a resurvey of sections 5, 8, and 17, the boundary line just mentioned running only a short distance east of the west line of the township. That survey, however, is not involved in these suits. In 1854 Boyd made a resurvey of certain portions of sections 31 and 32, comprising 90.41 acres, which had been omitted from the Warren survey; but these lands likewise are not here involved. In 1871 Bristol surveyed certain lands in sections 4, 9, and 10, aggregating 280.12 acres, which also had been omitted from the Warren survey. In 1916–17 Kidder, under instructions from the General Land Office, also surveyed an additional 617.21 acres in this township, which had been omitted from the previous surveys. The total area left out of the Warren survey was 987.77 acres. In addition to this he left out 59.90 acres, but the area was so small that Kidder did not think it proper to include the omitted ground in his survey of 1916–17.

The suits do not affect the bed of Ferry Lake. The property involved consists of uplands, which never formed a part of the bed of the lake. Many of the facts are stipulated (No. 160, 95).

We think it can with truth be said that the following facts are conclusively established:

1. That Warren in his survey of the township omitted 987.77 acres of high lands which were in place at the time of his survey, but were returned on

his map as *water*, when in reality they were of the same character and quality as the *lands* he actually surveyed and in many instances higher in elevation than the lands included within his lines.

2. That the areas so left out lie between his so-called meander line and the real shore of the lake.

3. That all of such areas are above the mean high-water elevation of Ferry Lake as it existed in 1812 and 1839 (the 173.09 foot contour), which elevation was known to and recognized by Warren in his survey of other portions of the township.

4. That at the time of Warren's survey the lake did not occupy, with respect to the tracts in suit, the position represented on Warren's plat.

5. That Warren's traverse was not, as a matter of fact, an accurate survey of the meanderings of the water course; that it did not show the place of the water course and its sinuosities; and that it is false and misleading in that it does not afford any accurate means of ascertaining the quantity of land in the fractional sections which were patented to the patentees.

6. That the Kidder survey, which was made under the direction and with the approval of the Department of the Interior, is correct.

As already indicated, five cases in all were consolidated, four of which are now before this court. Some of the facts in these four cases require separate treatment. We accordingly take them up in the order they are numbered.

This suit involves lot 1 of section 3, containing 5.67 acres, claimed by the Government to have been omitted from the Warren survey of 1839. The defendants Lane and Producers Oil Company asserted that title passed from the United States to Louisiana as swamp and overflowed lands under the acts entitled "An act to aid the State of Louisiana in draining the swamp lands therein," approved March 2, 1849, and "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," approved September 28, 1850 (18, 42). No proof, however, was introduced showing that the lands ever passed from the United States to Louisiana. The uncontradicted evidence was that the lands were not swamp. Indeed the parties in effect stipulated that this was the fact (97). The Producers Oil Company also alleged, in the alternative, that if title did not pass to Louisiana, nevertheless the United States had parted with title in consequence of a patent issued to the heirs of John Russell on September 26, 1906, embracing certain subdivisions in section 3 (24). Lane likewise adopted this answer (44). The patent was introduced in evidence (235, 273), and there was also introduced in evidence a lease (275) in favor of the Producers Oil Company, bearing date October 8, 1910, signed by various parties; but there was no proof that they were Russell's heirs. The Producers Oil Company apparently recognized that the oil in controversy was not

located within the limits of the patented lands, for no royalty was ever paid under the lease just mentioned. On the contrary, royalty was paid under a lease the validity of which depended on title flowing from the State of Louisiana (237, 291, 293, 299). In fact, it was stipulated that the oil from the land in controversy was taken into the pipe line of the Texas Company and sold for the account of the Producers Oil Company, the Board of Commissioners of the Caddo Levee District, and Lane (211). All of this is significant as showing an admission on the part of these parties that the land in controversy was not included within the limits of the patented area. A stipulation was entered into recognizing the accuracy of Kidder's survey and embracing certain other facts (95). With respect to the meander line run by Warren in his survey of 1839 Leverett testified there was no geological or other evidence indicating that it was run along the shore of any lake, stream, or watercourse (108–110). Cowles gave similar testimony (115–116). Janes also gave similar testimony (120). Clement, a Government surveyor, likewise testified that Warren's meander line does not represent the border of any water area, lake, or other watercourse; that it does not follow the contour and can not be construed as being a true meander of any body of water; that it is incorrect if it was intended to represent the meander line because it does not follow the contour of a lake, or the sinuosities of a stream, or of any body of water or watercourse;

that it does not follow the configuration of the shores of Ferry Lake or Jeems Bayou or any other watercourse (129).

Q. I will ask you to state whether as a fact the incorrectness of the Warren so-called meander line about which you have testified is or is not as a matter of fact apparent.

A. It is apparent (129).

Kidder, the Government supervisor of surveys, stated that there was no evidence of a bank of any kind or anything to indicate a body of water along Warren's meander line (164, 170).

Q. If it was intended to represent the meander line of Jeems Bayou or Ferry Lake or any other stream or water course, state what is your opinion as a surveyor as to its correctness or not.

A. I would say that it is absolutely incorrect.

Q. State whether or not the error was apparent or manifest, in your opinion as a surveyor.

A. That error was apparent and manifest and was observable the moment the eye sighted along his traverse in that place (170).

Q. I will ask you to state whether, in your opinion as a surveyor, there is anything in the topography of the country, or was at the time of the Warren survey, excusing or justifying the running of the line or the elevation at which it was run.

A. Nothing whatever (171).

It is true, however, that both Clement and Kidder testified that the area of water included in Warren's survey exceeded by about three acres the land omitted from the latter's survey (143, 196). It is also true that the plat of Warren's survey reveals the tract in question, as well as all the other tracts in the various suits, as bordering on Ferry Lake (194).

*No. 161, United States* v. *Gulf Refining Co.*

This suit involves lot 1 of section 24, containing 11.49 acres. The defendant in its answer deraigns title from the State of Louisiana (12). It alleges the property to be a part of the bed of Ferry Lake, a navigable body of water, the title to the bed passing to the State on her admission to the Union; but in the alternative it is alleged that if title did not pass in this way, the State, nevertheless, acquired the same by the act of Congress of March 2, 1849, granting to Louisiana all swamp and overflowed lands within its area, the tract, it is alleged, being of this character (13). In the alternative, it is alleged that if title did not pass in this way, then the United States parted with its title by virtue of a patent issued on April 4, 1843, to James Shinick, embracing fractional section 24, and that the land in controversy is a part of the patented area. The patent was introduced in evidence (No. 160, 240; No. 161, 20). The defendant, however, in no way connected itself with the title of the patentee. On the contrary, as just stated, it deraigned title under the

State of Louisiana (No. 160, 240, 241; No. 161, 21, 26). No evidence was introduced showing that title passed to Louisiana. The stipulation entered into (No. 160, 95) precludes the defense that the land was ever a part of the bed of Ferry Lake, or that it was swamp or overflowed land. Of course the Government is not entitled to recover if title passed to the patentee, but this evidence is referred to as indicating an admission on the part of the defendant that the tract in dispute was never included within the patented area.

The testimony of Leverett, Cowles, Janes, and Clement, already referred to, is applicable here. Clement's testimony that the incorrectness of the Warren so-called meander line is apparent is applicable to all of the suits. He also described the character of the Warren meander line, and in speaking of a portion of the line he says that it "fails to follow the contour or shore of Ferry Lake; it does not represent a meander line of the lake or follow the sinuosities of any stream or watercourse" (No. 160, 30). He also testified that Warren's meander line at places projects into the lake, and that there is perhaps as much water included in the Warren survey as omitted land (No. 160, 142–143). In speaking of the Warren meander line through this section Kidder testified that it was run without regard to the contour of Ferry Lake; that it is a very incorrect line between angle points 5 and 7; that this portion of the line results in the exclusion

of the area involved in this suit; that the error is a manifest one, for reasons given (No. 160, 186).

*No. 162, United States* v. *Southwestern Gas & Electric Company et al.*

This suit involves lot 1 of section 13, containing 27.87 acres. The defendants deraign title under a homestead patent issued on November 11, 1901, to Robert L. Gilbert embracing the east fractional half of section 13 (14). The patent and the various deeds were introduced in evidence (28, 31, 32). The testimony of Leverett, Cowles, Janes, and Clement, already referred to, is also applicable here. Clement also testified that Warren's meander line across this section "goes over a high hill at a considerable distance from the true shore of Ferry Lake, reaching a maximum elevation of about 12 or 13 feet above the 173.09 foot contour" (135). The highest point of land in the area in dispute is 23 feet above the elevation of Ferry Lake (136). Kidder described the meander line in detail (No. 160, 179–184), and then testified:

> Q. I will ask you to state whether the Warren meander line referred to follows the contour of Ferry Lake?
>
> A. It does not.
>
> Q. Does it parallel the border of the lake?
>
> A. Not through lot 1.
>
> Q. State whether or not, in your opinion as a surveyor, it was run without reference to the contour.

A. That is very apparent, that it was run without reference to the contour.

Q. In your opinion as a surveyor and your knowledge of the topographic situation, state whether or not the so-called traverse line referred to is or is not correct.

A. At the traverse line, or that portion that segregates lot 1 of section 13 from the fractional section 13, as surveyed by A. W. Warren, is absolutely incorrect as a meander line.

Q. State whether the error is apparent and manifest.

A. The error is manifest (No. 160, 184).

*No. 163, United States* v. *Gulf Refining Co.*

This suit involves lot 7 of section 10, containing 12.72 acres. The defendants Walling and Crude Oil Company were dropped from the suit (57), leaving only two defendants, Natalie Oil Company and Gulf Refining Company, both of whom deraign title under a patent issued by the United States on July 3, 1897, to Thaddeus W. Marshall, embracing the west half of the northeast quarter and lot 5 of section 10 (13). The patent was introduced in evidence (39) and an abstract of title (No. 160, 241).

The testimony given by Leverett, Cowles, Janes, and Clement, already referred to, is likewise applicable here. Kidder described how he retraced Warren's meander line in this section (No. 160, 172–178). He then continued:

Q. Now, Mr. Kidder, I will ask you to state whether or not in running that portion of the

meander line referred to, Warren departed from the lake at a point approximately on the mean high-water elevation, and returned to the lake on his last course at the mean high-water elevation?

A. Yes, sir; he did.

Q. What have you to say, in your opinion as a surveyor and from your knowledge of the line itself, as to the correctness or incorrectness of the traverse line of Warren, about which you have been talking?

A. I would say, from a surveyor's point of view, that Warren's traverse line segregating lot 7 of section 10 from the fractional south half of section 10, as surveyed by A. W. Warren, does not comply with the requirements of a meander line in any particular, and that it is an error and that the error is obvious, as soon as that line was retraced on the ground, and the error is very apparent.

Q. If intended as a meander line, I will ask you to state if the error is apparent and manifest.

A. It is. (No. 160, 178.)

There is one peculiarity about this suit which is not common to the others; or, if common to the others, not in such a remarkable degree. It is to be borne in mind that Warren in 1839 surveyed the whole of township 20. Boyd resurveyed a portion in 1854, located in sections 31 and 32. He found that Warren had omitted 90.41 acres of upland in these sections, and accordingly surveyed them. Bristol also made, in 1871, a resurvey of portions of sections 4, 9, and

10. He found that Warren had omitted 280.12 acres in these sections, and accordingly included them in his survey. When Kidder resurveyed the whole township he found that Warren had omitted another 617.21 acres, and accordingly these were included in Kidder's survey of 1916–1917. The total therefore of all of the areas omitted by Warren in this township is 987.71 acres (No. 160, 148). Kidder also found that Warren had omitted another 59.90 acres of upland, lying between Warren's meander line and the actual shore of Ferry Lake; but, as Kidder testified, "the area is negligible, absolutely no apparent error in the Warren survey, and the strip makes up the land that in ordinary practice emanates to the riparian proprietors under their rights" (No. 160, 149). He added, with respect to the 59.90 acres, that "there is no manifest error in that part of the line as it agrees with the contour of the lake" (No. 160, 149). The total area, therefore, of the upland omitted in Warren's survey is 1,047.67 acres. Deducting, however, the 59.90 acres which Kidder described as negligible, we have left 987.77 acres of upland omitted in the Warren survey. Of this amount 280.12 acres, which were included in the Bristol survey of 1871, are located in a compact body in sections 4, 9, and 10 (No. 160, 148). The area in section 10 omitted from the Warren survey of 1839 is 193.13 acres (No. 160, 179). The land involved in this suit, No. 163—lot 7 of section 10, containing 12.72 acres—comprises in reality a part of the 193.13

acres in section 10, and a part of the 280.12 acres in sections 4, 9, and 10. It is separated from the other acreage by a small tract shown on the Warren survey of 1839.

Case No. 119, *Jeems Bayou Fishing & Hunting Club et al.* v. *United States*, involves lots 8, 9, and 10 of section 10, containing 85.22 acres, omitted from both the Warren survey of 1839 and the Bristol survey of 1871. The Court of Appeals, in affirming the decree of the lower court, thought that the area omitted was so great as to justify a decree in favor of the United States. Although the area involved in the suit now under consideration was in addition to the area just mentioned, the two tracts being separated only by the tract referred to, the Court of Appeals nevertheless decided against the Government.

The report of the master, to whom the cases were referred, was favorable to the United States (No. 163, 91). The master, however, allowed defendants to deduct from the value of the oil the costs of drilling and operating the wells. Both parties took exceptions, the Government on the ground that the costs of drilling and operating should have been disallowed; the other parties on the ground that the master was in error in finding title in the United States. The District Court overruled all exceptions and confirmed the report (No. 160, 357). Decrees were accordingly entered in each case, the form of the decree in No. 160 (361) being typical of the others.

Both parties appealed to the Circuit Court of Appeals. That court, reversing the decree of the District Court, directed that the bills of complaint be dismissed, and that the Government's cross-appeals be dismissed too (No. 163, 92). The United States prosecuted appeals to this court, the assignments of error in No. 160 (396) being typical of the other cases. These assignments, which it will be unnecessary to reproduce in full, represent substantially the following two matters:

ASSIGNMENTS OF ERROR.

1. That the Court of Appeals was wrong in deciding that the various patents issued by the United States carried title to the margin of Ferry Lake, and therefore included all of the lands in dispute; the Government contending that the title of the various patentees stopped at the so-called Warren meander line and did not extend beyond that line to the margin of the lake.

2. That if the United States is entitled to prevail the defendants are not entitled, as the District Court held, to be credited with the cost of *drilling* the wells. Unlike the assignments of error before the Court of Appeals, the Government does not, in this court, attack the ruling of the District Court in allowing the defendants credit for the cost of *operating* the wells. (No. 160, 396.)

The Government's contention, in brief, is that all of the tracts in controversy were, prior to the survey, approved March 28, 1917, unsurveyed public

lands, then and now constituting part of the public domain. The defense is that the lots, as a matter of law, form a part of the patented lands and that the patents convey title to the margin of the lake.

ARGUMENT.

THE GENERAL RULE IS THAT A LAKE OR WATER-COURSE SHOWN ON THE PLAT OF SURVEY IS THE MEANDER BOUNDARY, AND THAT THE PATENT CONVEYS TITLE TO THE WATER'S EDGE AND NOT BEYOND TO THE MEANDER LINE. BUT THIS COURT HAS ON FREQUENT OCCASIONS RECOGNIZED EXCEPTIONS TO THE RULE, AND WE BRIEFLY CALL ATTENTION TO THOSE EXCEPTIONS.

*Horne* v. *Smith*, 159 U. S. 40. In this case the government plat represented fractional sections as bordering on a named *river*. As a matter of fact, the water bordering on the fractional sections was not a river but a *bayou*. Between the bayou and the river was a tract of ground, 600 acres in extent, which the plaintiff claimed to own by virtue of the patents to the fractional sections. The river was, in fact, a mile beyond. This court held that title under the patents stopped at the *bayou*.

*Niles* v. *Cedar Point Club*, 175 U. S. 300. In this case a meander line was run by the Government surveyor. Both the field notes and the plat showed a "marsh" and "impassible marsh and water" lying beyond the meander line. It was held that a patent to the fractional sections bordered by this

meander line did not carry title beyond to the shore of Lake Erie.

*French-Glenn Live Stock Co.* v. *Springer*, 185 U. S. 47. Both the field notes and the plat represented Malheur Lake as bordering on certain fractional sections. Asserting that the patents thereto operated to convey title to the water's edge and therefore gave riparian rights to whatever land in front was left dry by the recession of the lake, the plaintiff, deraigning title under these patents, sued to recover possession of the land thus left dry. The jury having determined by its verdict that the lake never existed in front of these fractional sections, this court, overruling the contention that the field notes and the plat were conclusive, held that title under the patents stopped at the so-called meander line.

*Security Land & Exploration Co.* v. *Burns*, 193 U. S. 167. The exterior lines of a township were surveyed, but with one small exception no survey was made of the interior. The survey was in fact fraudulent. The plat based upon this survey represented certain fractional sections as bordering on a lake when in fact the lake was nearly a mile away. It was held that patents to the fractional sections did not pass title to the large area lying between the so-called meander line and the actual shore of the lake.

*Chapman & Dewey* v. *St. Francis*, 232 U. S. 186. A township plat of survey indicated an unsurveyed

area of approximately 800 acres, designated thereon as "Sunk Lands." This area was meandered as though it were a lake when in fact it was only temporarily overflowed. It was held that a patent granting the township to Arkansas under the swamp land act did not operate to pass title to the part thus erroneously designated on the plat as a lake.

*Producers Oil Co.* v. *Hanzen*, 238 U. S. 325. The official plat, based upon a survey in 1871, showed two lines in close proximity to each other, one representing the surveyor's traverse lines and the other the shore of a bayou. To use the language of this court, the plat "is very small and does not indicate with certainty whether traverse lines or the stream constitute" the boundary. In describing one of the courses, the field notes recited that at a designated point a "spur of marsh extends out north." While recognizing the general rule that patents to fractional sections bordering on a navigable stream carry title to the water's edge, it was held that the circumstances just referred to, as well as others mentioned in the opinion, such as the discrepancy between the number of acres designated in the patent and the area in dispute, took the case out of the general rule.

*Lee Wilson & Co.* v. *United States*, 245 U. S. 24. In this case it was held that although the Government survey indicated a lake, 853.60 acres in extent, within the township, the Government, nevertheless, in patenting the township to the State of Arkansas,

did not part with its title to the 853.60 acres, the lake itself being a myth and the survey a mistake in this respect.

WE NOW COME TO THE MAIN CASES IN WHICH THIS COURT HAS HELD THAT A PATENT TO LAND BORDERING ON A STREAM CARRIES TITLE TO THE WATER'S EDGE.

*Railroad Co.* v. *Schurmeir*, 7 Wall. 272. Here the Government surveyor in surveying a fractional lot, triangular in shape, began at a certain corner and ran south along the section line to a point intersecting the bank of the Mississippi River, where a meander post was set. He then went back to the beginning point and measured east along another section line until he struck the river again, where another meander post was set. He then measured along the stream between the two meander posts. The official plat, based upon this survey, did not portray the meander line, but merely the edge of the river. No reference was made either in the field notes or on the plat to a small island 90 feet wide and 160 feet long lying in front of the lot. It was held that the patent conveyed title to the water's edge, and that the edge of the river was on the *farther* side of the island, where the main channel flowed. Said the court:

> In preparing the official plat from the field notes, the meander line is represented as the border line of the stream, and shows, to a demonstration, that the water course and not

the meander line, as actually run on the land, is the boundary.

*Mitchell* v. *Smale*, 140 U. S. 406. In this case a patent was issued to a fractional quarter of a fractional section, containing 4.53 acres. Both the field notes and the plat based thereon showed that the lake bordering upon this fractional section was meandered. There was, however, a tongue of land, containing 25 acres, extending into the lake. While it was held that under the circumstances shown the patent operated to pass title to the water's edge and therefore to include this area, the court was nevertheless careful to say:

> We do not mean to say that in running a pretended meander line the surveyor may not make a plain and obvious mistake, or be guilty of a palpable fraud; in which case the Government would have the right to recall the survey and have it corrected by the courts, or in some other way. Cases have happened in which, by mistake, the meander line described by a surveyor in the field notes of his survey did not approach the water line intended to be portrayed. Such mistakes, of course, do not bind the Government.

But the court continued:

> In the present case it can not be seriously contended that any palpable mistake was made, or that any fraud was committed, by the surveyor who made the survey in 1834–5.

IN THE LIGHT OF ALL THE CASES MENTIONED WE MAINTAIN THAT THE SO-CALLED WARREN MEANDER LINE FORMS THE BOUNDARY OF THE PATENTED AREAS AND THAT THE PATENTS DO NOT CARRY TITLE TO THE WATER'S EDGE.

The field notes of Warren's survey were sent up in the original and bound with certain plats. There is no call in the *field notes* showing that Warren in running his so-called meander line followed the margin of Ferry Lake. The field notes give evidence of the fact that Warren ran his *section* lines to the lake, and the testimony shows that such section lines were, in practically every instance, terminated upon the 173.09 contour. There are references in the notes to the running of "traverses" in front of certain sections. These traverses, as the evidence shows and the master found, did not denote the banks of the lake or any other body of water and did not even approximate the contour. These traverses do not represent the shape or configuration of the shore line and were not run, as the master found, with reference to the banks of the lake. There is nothing in the *notes* which shows affirmatively that the traverse followed the margin of the lake. The proof shows the contrary. The lines were run through the hills without regard to a body of water.

In *Railroad Co.* v. *Schurmeir, supra,* the court in its statement of the case said:

> There is apparently no law which requires what is hereafter spoken of and called the

> "meandering" of water courses; but the acts of Congress above referred to do require the contents of each subdivision to be returned to, and a plat of the land surveyed, to be made by the surveyor general; and this makes necessary an accurate survey of the meanderings of the water course, where a water course is the external boundary; the line showing the place of the water course and its sinuosities, courses, and distances is called the "meander line" (p. 274).

Again, at p. 286:

> Meander lines are run in surveying fractional portions of the public lands bordering upon navigable rivers, not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of the land in the fraction subject to sale, and which is to be paid for by the purchaser.

Measured by the definition just set forth Warren's so-called meander line is not one in fact, because:

1. It is not "an accurate survey of the meanderings of the water course."
2. It does not show "the place of the water course and its sinuosities."
3. It does not define "the sinuosities of the banks of the stream."
4. It is false, erroneous, and misleading in that it does not afford any reliable means "of ascertaining the quantity of the land in the fraction subject to sale, and which is to be paid for by the purchaser."

In *Gauthier* v. *Morrison*, 232 U. S. 452, it appeared that in 1877, when certain public lands in Washington were surveyed, an area embracing approximately 1,200 acres was by wrongful act or error of the surveyor omitted from the survey and meandered as a lake, when in truth it was not such but was agricultural land susceptible of cultivation. The plaintiff endeavored to take possession of this area, which was still unsurveyed, in order ultimately to acquire a patent under the homestead law; but the defendants claiming title to the same because the patents under which they held embraced lands which the plat designated as bordering on the lake, forced the plaintiff off. In holding that under the pleadings the plaintiff was entitled to an injunction forbidding the defendants from interfering with his possession, the court said:

> So, if the area designated and meandered as a lake was in truth agricultural land susceptible of cultivation, as alleged in the complaint and admitted by the demurrer, it was as much public land after the survey and as much within the operation of the settlement laws as if its true character had been reported by the surveyor. It merely was left unsurveyed.

The court then stated the scope of the opinion with admirable precision:

> It will be perceived that we are not speaking of land which was covered by a permanent body of water at the time of the survey

> and thereafter was laid bare by a subsidence of the water, nor yet of comparatively small areas which sometimes lie within meander lines *reasonably approximating the shores of permanent bodies of water.*

The Government's contention is that Warren's so-called meander line does not reasonably approximate the shore of Ferry Lake. Another fact which must not be overlooked is that in *Hardin* v. *Jordan*, 140 U. S. 371, and in *Railroad* v. *Schurmeir*, *supra*, the *field notes* of both surveys expressly describe the meander line as being along the margin of the waters there involved.

As already indicated, Warren's *field notes* do not disclose that he is meandering the edge of the lake. They do not anywhere state that the line was run along the bank or margin of any body of water. The total area omitted in his survey was 1,047.67 acres, and the master found, correctly we submit, that he made a manifest error in the omission of these tracts. It is impossible to apply to these suits the doctrine announced in *Mitchell* v. *Smale*, *supra*, that the meander line "by its exclusions and inclusions of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream."

We repeat again that in *Railroad Co.* v. *Schurmeir*, *supra*, and *Mitchell* v. *Smale*, *supra*, the field notes themselves affirmatively disclose that the surveyor was meandering a body of water. Warren's field

notes, on the contrary, do not affirmatively disclose that he was doing the same thing. Nowhere does he mention that he is meandering a lake. If, as a matter of fact, this was his intention the field notes do not disclose it. An examination of them will reveal the fact that in running his *section* lines, he terminated them at the edge of the lake, and specifically refers to the establishment of posts at the water's edge to show the corners. This is then followed by a description of his traverse lines. One of the headings, for example, reads "Traverse—Front of Sec. 1." Various subheadings are employed, such as "Front of Sec. 24," "Front of Sec. 13," etc. The official plat, however, of his survey discloses, it is true, Ferry Lake as bordering the lands surveyed. But the official plat is not controlling. The field notes may be resorted to. (*Producers Oil Co.* v. *Hanzen*, 238 U. S. 325.) And as said by this court in *Chapman & Dewey* v. *St. Francis*, 232 U. S. 186, 196:

> Of course, the words in the patent "The whole of the township (except section sixteen)" are comprehensive, but they are only one element in the description and must be read in the light of the others. The explanatory words "according to the official plats of survey of said lands returned to the General Land Office by the surveyor general" constitute another element, and a very important one, for it is a familiar rule that where lands are patented according to such a plat, the notes, lines, landmarks and other par-

> ticulars appearing thereon become as much a part of the patent and are as much to be considered in determining what it is intended to include as if they were set forth in the patent. *Cragin* v. *Powell*, 128 U. S. 691, 696; *Jefferis* v. *East Omaha Land Co.*, 134 U. S. 178, 194. The specification of the acreage is still another element, and, while of less influence than either of the others, it is yet an aid in ascertaining what was intended, for a purpose to convey upwards of 22,000 acres is hardly consistent with a specification of 13,815.67 acres. *Ainsa* v. *United States*, 161 U. S. 208, 229; *Security Land Co.* v. *Burns*, 193 U. S. 167, 180; 3 Washburn on Real Property, 5th ed., 427.

We, therefore, submit that the testimony discloses a palpable mistake on the part of the surveyor and that the circumstances disclosed by the record take the cases out of the general rule that the body of water shown on the official plat constitutes the real boundary of the patented areas.

THIS COURT SEEMS TO BE COMMITTED TO THE DOCTRINE THAT A MEANDER LINE TO BE BINDING MUST REASONABLY APPROXIMATE THE SHORE LINE.

In *Gauthier* v. *Morrison*, *supra*, the language already quoted—

> It will be perceived that we are not speaking of land which was covered by a permanent body of water at the time of the survey and thereafter was laid bare by a subsidence of the water, nor yet of comparatively small areas which sometimes lie within meander lines

> *reasonably approximating the shores of permanent bodies of water—*

seems to be a plain recognition of the fact that the decisions of this court, in applying the general rule already referred to that a stream and not a traverse line is the true boundary, as exemplified in the two leading cases of *Railroad Co.* v. *Schurmeir, supra,* and *Mitchell* v. *Smale, supra,* unmistakably proceed upon the theory that the traverse lines there under consideration did in fact *reasonably approximate the water's edge.* In these cases, however, the undisputed testimony establishes that Warren's so-called meander or traverse line in no sense reasonably approximates the water's edge.

THE FACT THAT IN MITCHELL *v.* SMALE, 140 U. S. 406, THIS COURT HELD THAT A PATENT EMBRACING A FRACTIONAL QUARTER CONTAINING ONLY 4.53 ACRES, NEVERTHELESS OPERATED TO PASS TITLE TO THE WATER'S EDGE AND THEREFORE TO INCLUDE AN ADDITIONAL 25 ACRES, SEEMS TO HAVE MEASURABLY INFLUENCED THE COURT OF APPEALS IN DECIDING AGAINST THE GOVERNMENT. IT IS SUBMITTED, HOWEVER, THAT CASES OF THIS SORT ARE NOT TO BE DECIDED ON A COMPARISON OF AREAS, BUT UPON THE FUNDAMENTAL PROPOSITION WHETHER THE MEANDER LINE REASONABLY CONFORMS TO THE MARGIN OF THE LAKE.

The later decision in *Producers Oil Co.* v. *Hanzen,* 238 U. S. 325, certainly does not proceed upon the theory that cases of this sort are to be determined merely by a comparison of areas. It affords no

basis for the proposition that this court ever intended to lay down the rule that if the area erroneously omitted is no greater than approximately six times the area included, the patent carries title to the water's edge. In that case the area of lot 1, which the patent embraced, was 12.84 acres. The area of the adjoining land in dispute was, according to one survey, 40 acres, and according to another, 87 acres. The discrepancy in acreage was a factor, along, of course, with others, which led this court to the conclusion that the patent did not pass title to the disputed tract. The whole reasoning in that case is inconsistent with the notion that the doctrine to be deduced from *Mitchell* v. *Smale* is that cases of this sort are to be determined by a comparison of areas. The only logical course which this court can take is, we submit, that cases of this sort are to be determined by the application of a simple test—whether the meander line reasonably approximates the margin of the lake.

IF THE COURT OF APPEALS WAS WRONG IN DISMISSING THE BILLS OF COMPLAINT, THEN IT IS SUBMITTED THAT THE DISTRICT COURT WAS WRONG IN ALLOWING THE DEFENDANTS CREDIT FOR THE COST OF DRILLING THE WELLS.

As already indicated, the Government's assignments of error in the Court of Appeals assailed the action of the District Court in allowing the defendants credit for both the cost of *drilling* and of *operation*. The assignments of error in this court simply challenge

the action of the District Court in allowing credit for the cost of *drilling*. Inasmuch as our brief in consolidated cases Nos. 117, 104, 111, 112, 113, 114, 115, and 116 goes exhaustively into the question of the proper measure of damages, we think it unnecessary to repeat the argument here, particularly because some of the counsel appearing in those cases also appear here. The following cases sustain our contention:

*United States* v. *St. Anthony R. R. Co.*, 192 U. S. 524.

*United States* v. *Midway Northern Oil Co.*, 232 Fed. 619, 633.

*United States* v. *McCutchen*, 238 Fed. 575, 593, 594.

*St. Clair* v. *Cash Gold Min. & Mill. Co.*, 9 Colo. App. 235, 241; 47 Pac. 466, 468.

*Hall* v. *Abraham*, 44 Ore. 477, 481; 75 Pac. 882, 883.

*Martin* v. *Porter*, 5 Mees. & W. 351 (1839).

*Morgan* v. *Powell*, 3 Q. B. 278 (1842).

*Llynvi Co.* v. *Brogden*, L. R. 11 Eq. 188 (1870).

It is respectfully submitted that the decision of the Court of Appeals should be reversed.

JAMES M. BECK,
*Solicitor General.*

WILLIAM D. RITER,
*Assistant Attorney General.*

NOVEMBER, 1922.

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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

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UNITED STATES OF AMERICA,

*versus* No. 160.

C. W. LANE, ET AL.

---

UNITED STATES OF AMERICA,

*versus* No. 163.

GULF REFINING COMPANY OF LOUISIANA, ET AL.,

---

UNITED STATES OF AMERICA,

*versus* No. 162.

SOUTHWESTERN GAS & ELECTRIC COMPANY,

---

UNITED STATES OF AMERICA,

*versus* No. 161.

GULF REFINING COMPANY OF LOUISIANA.

---

Appeals from the United States Circuit Court of Appeals, Fifth Circuit.

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Original Brief for Defendants and Appellees.

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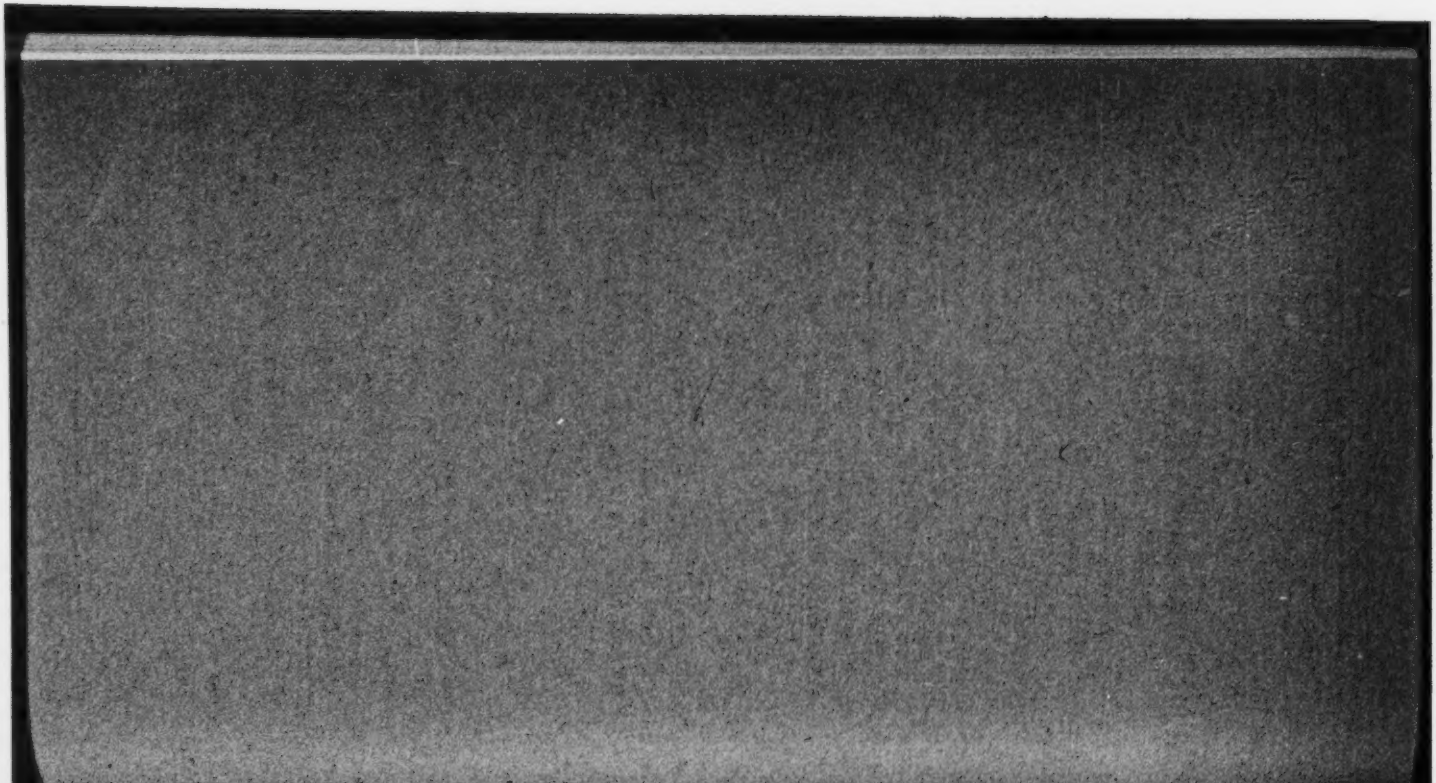

## INDEX.


| | Page. |
|---|---|
| Statement of the case | 2 |
| Defense | 3 |
| Argument | 5 |
| Agreed statement of facts | 6 |
| Admission "that with a remarkable degree of accuracy Warren located all of his meander posts on or close to the contour lines representing the mean high water of Ferry Lake at that date, and that with respect to the township and range lines, the section line, corners and all meander posts of Warren's survey is, considering the conditions under which the survey was made, remarkably accurate" | 10 |
| The mode and practice of surveying the public lands are of statutory creation, the statutes nowhere mentioning meander lines | 10 |
| The official plats do not show a meander line, but show the general form of the lake deduced therefrom and the surrounding fractional lots, adjoining and bordering on the same. The patents, when issued, refer to this plat for identification of the lots conveyed, and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream | 14 |
| Taking the Government's contention, the entire amount of land omitted from the Warren survey on the north shore of Ferry Lake, involved in the suits in controversy, is only 25 acres out of six sections. | 19 |
| Analysis of the exceptional cases in which the meander lines have been held boundaries | 20 |
| Inapplicability of each of these decisions to the instant case | 21-26 |
| If Warren's survey was accurate when made, it is still accurate | 29 |

II.

## LIST OF AUTHORITIES CITED IN ARGUMENT.


*Page.*

Section 2396, Revised Statutes..... 10

Chapman & D. Lbr. Co. v. St. Francis Levee District, 232 U. S., 186..... 20

French-Glenn Stock Co. v. Springer, 185 U. S., 47....20-21

Gauthier v. Morrison, 232 U. S., 457.....21-24

Hardin v. Jordan, 140 U. S., 371..... 13

Horne v. Smith, 159 U. S., 40.....21-24-26

Mitchell v. Smale, 140 U. S., 406.....13-28

Niles v. Cedar Point Club, 175 U. S., 308..... 20

Producers Oil Co. v. Hanszen, 238 U. S., 339.....14-21-25

Producers Oil Co. v. Hanszen, 61 Sou., 760..... 18

St. Paul & P. R. Co. v. Schurmeier, 7 Wall. 272..... 13

Security Land & E. Co. v. Burns, 193 U. S., 167.....21-22

Wilson & Co. v. United States, 245 U. S., 24.....21-22

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*versus* No. 161.

GULF REFINING COMPANY OF LOUISIANA.

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**Appeals from the United States Circuit Court of Appeals, Fifth Circuit.**

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**Original Brief for Defendants and Appellees.**

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These four suits, with others, were brought by the United States, each for the recovery of a small tract of land in Caddo Parish, Louisiana, on which oil had been discovered and produced by the defendants thereon.

Each of the suits involves title to a small area of land, which the Government contends was omitted from the offi-

cial survey in 1839 of the township in which they are located. Combined with such suits are demands for accounting, for judgment for the value of the oil extracted, for injunction and receivership.

The United States had judgment in the District Court in each case, but the Circuit Court of Appeals reversed these decrees and dismissed the bills. The Government has appealed.

## STATEMENT OF THE CASE.

Discussion of the issues presented will be facilitated by a brief statement of part of the history of the case before examining the pleadings.

Township 20 North, Range 16 West, Louisiana Meridian, in which township all the tracts embraced in these various suits lie, was first surveyed by A. W. Warren, United States deputy surveyor. His survey showed the existence of a large navigable lake within the township, the official plat of survey showing a number of fractional sections, made fractional by the existence of such lake, into which, of course, surveys could not be extended, since the lake was the property of the State of Louisiana. According to the official plat of survey all these fractional sections were bounded by the waters of the lake, and all of the tracts shown on the Warren plat had been sold prior to the suits, and patented by the United States.

These defendants all possess under such patents up to the waters of Ferry Lake.

In 1913, under instructions of the Commissioner of the General Land Office, a resurvey was made of Township 20 North, Range 16 West, by Arthur D. Kidder, Supervisor of Surveys. Mr. Kidder, after re-establishing the Warren survey, filed a plat, in which he depicted new governmental subdivisions lying between the high water of Ferry Lake as it existed in 1839 and the meander lines shown in Warren's field notes. This plat was approved by the Interior Department, whereupon the Government laid claim to such of these tracts as had proven productive of oil, and these suits followed.

The defense in all of the cases is the same, being, perhaps, a little more elaborate in the answer in No. 163, in which the defendants are sued for what is styled in the bill of complaint, Lot 7 according to the Kidder survey, the defendants holding under a patent from the United States to the fractional S. E. ¼ of Section 10, Township 20 North, Range 16 West (Record in No. 163, page 13):

> "And defendants show that the well in question is located on Lot 5 or the fractional SE¼ of Section 10, Township 20 North, Range 16 West, Louisiana Meridian, as per plat of survey by A. W. Warren, United States deputy surveyor, approved on the 31st day of August, 1839, and on file in the General Land Office of the United States; and that on the 3d day of July, 1897, a patent was issued by the United States to Thaddeus W. Marshall, conveying to said Marshall the full and complete title to all of said fractional SE¼ or Lot 5 of said Secton 10, Township 20 North, Range 16 West, Louisiana Meridian,

according to aforesaid plat and field notes of such survey by A. W. Warren, deputy surveyor, which said plat and field notes showed said tract to be bounded by the mean high water of Ferry Lake, a navigable body of water, and which said patent, accordingly, under the laws of the United States, evidenced the transfer by the United States to said Marshall of the full, complete and perfect title to all of said tract of land, as so bounded by the waters of Ferry Lake. And defendants show that the pretended lot 7, of said section as referred to in the bill of complaint is part of said fractional SE¼ of Lot 5 of said section, conveyed by said patent to said Marshall, as aforesaid, and that it represents an unauthorized, illegal and void attempt by the General Land Office of the United States to survey as public land, property in private ownership, by arbitrarily and illegally claiming the meander line of the lake to be the boundary of defendants' property and to take from defendants in violation of their rights as holding under said patent to Marshall all of that portion of said tract not embraced within the calls of such meander line, which was not run as the boundary of such subdivision but merely to denote the general contour of the lake front thereof."

Such defense is also, in almost the same language, pleaded in the other cases. (See Record No. 162, p. 15; Record No. 161, p. 15; Record No. 160, p. 25.)

The cases were sent to trial before a special master, who, in spite of the fact that the parties had agreed on a statement of facts, permitted the introduction of a large mass of merely cumulative evidence which uselessly incumbers the record. He recommended in all of the cases judgment in

favor of the Government for the lands claimed, but holding that there was no question as to the defendants' good faith in each and every case, recommended that the Government's recovery for the value of the oil should be limited to the value of the oil, less the cost of producing the same.

From a decree of the District Judge, confirming this report, appeals and cross-appeals were taken to the Circuit Court of Appeals, which reversed the decree on defendants' appeals and dismissed the bills.

By agreement of counsel (Record, No. 160, p. 383) it is stipulated that all of the testimony and exhibits common to all of the suits should be copied in the record in suit No. 177 only, making the record in that case part of the record on appeal in each of the other cases. Such agreement appears in each of the other cases. (See Records No. 161, p. 50; No. 162, p. 63; No. 163, p. 72.)

It has also been agreed between counsel that, inasmuch as useless repetition would be thereby avoided and the labor of the Court in examining the records correspondingly decreased, the cases should be discussed in one brief.

## ARGUMENT.

But one issue is presented:

**Were the tracts of land involved in these cases left out of the Warren survey in 1839?**

For the purpose of expediting the trial of the cases and of simplifying the issues and obviating the necessity of

a bulk of testimony it was stipulated (Record No. 160, p. 95) at the time of trial before the Master as follows:

1. That the surveys made herein by Arthur D. Kidder, Supervisor of Surveys, and his associates and assistants, were made under instructions issued by the Commissioner of the General Land Office, as shown by letters of date September 27, 1913, and of December 1, 1916, from Clay Tallman, Commissioner of the General Land Office, to the said Arthur D. Kidder, Supervisor of Surveys, which will be offered in evidence herein by plaintiff, and that said surveys were made conformably to said instructions; that the surveys referred to herein are represented by certain official plats approved July 24, 1916, and March 28, 1917, which will be offered in evidence by plaintiff; that the plats made by the said Arthur D. Kidder, or under his supervision, hereinabove referred to, correctly depict the surveys as made by him, and that all the figures, measurements, courses, distances, elevation and topographic features shown on said plats are correct. It is also admitted that the said Arthur D. Kidder, Supervisor of Surveys, correctly re-established and reproduced the survey made by A. W. Warren, Deputy Surveyor, of Township 20 North, of Range 16 West, in strict accordance with the said original Warren survey, the said original survey being represented upon the official plat approved August 31, 1839.

2. That the contour line of 173.09 feet above mean Gulf level established by the said Arthur D. Kidder, Supervisor of Surveys, as the mean high water elevaton of Ferry Lake

in 1812 when the State of Louisiana was admitted into the Union, and in 1839 when A. W. Warren made his survey of Township 20 North, of Range 16 West, was in reality the mean high water elevation of Ferry Lake and James Bayou, at such dates, and that the meander line of Ferry Lake and James Bayou as run by said Kidder follows said contour of 173.09 feet.

3. That all of the tracts in controversy in these suits lie above the mean high water elevation of Ferry Lake as it existed in 1812 and 1839.

4. That the various tracts of land lying between the meander line of Ferry Lake and James Bayou as run by the said Arthur D. Kidder, and the line represented as a meander line upon the plat of said original Warren survey hereinabove referred to, including the tracts in controversy in these consolidated causes, were in 1812 and in 1839, at all times since said dates, and now are, lands in place and of the same character, geological formation, and quality as the lands surveyed by said Warren as aforesaid; that said tracts of land are now and were in 1812 and 1839 and at all times since said dates, what is known in this locality as hill land covered with native forest trees and vegetation characteristic of hill land, and that all of said lands were at the dates mentioned and at all times subsequent thereto, uplands in character and existed as such at the time of the said Warren survey and in 1812.

5. That the various tracts of land embraced in the extension survey of said Arthur D. Kidder, Supervisor of

Surveys, and represented upon the plats aforesaid, including the property in controversy in these consolidated causes, were not formed by accretion, or by the recession or reliction, of the waters of Ferry Lake or James Bayou since 1812.

6. That Ferry Lake is and was in 1812 and 1839 a navigable body of water.

7. This stipulation shall not be construed as an admission upon the part of defendants that the lands in controversy were not included within the survey made by A. W. Warren, as a matter of law, the defendants contending that under the Warren survey their titles extended to mean high water elevation.

---

Mr. Kidder, the Supervisor of Surveys, who made the resurvey upon which these suits are predicated, testified as follows (Record No. 160, pages 192, *et seq.)*:

> "Q. In your report, Mr. Kidder, a copy of which I hold in my hand, you made the following statement, which I will read to you:
>
> " 'With only one exception the original section lines as terminated upon the border of Ferry Lake show a proper recognition of the mean high water elevation of the raft period. I would not criticise the surveyor's judgment in the location of but one meander corner in the entire township and the meander lines along the lake front in Sections 1, 5, 8, 11, 17, 20, 26, 28, 31, 33 and 35 are reasonably correct.

"'The faithfulness of the early surveyors deputized by the United States to the performance of the great trust of establishing and marking for all time the lines defining the rights of her land patentees has been well demonstrated by the positive identification and recovery of the original lines after a period far beyond the span of the average human life. The deputy surveyors were called upon to explore and map a wild and remote virgin forest and swamp, to transport themselves and equipment by primitive methods, and to subsist themselves largely by hunting and fishing as best they could.'

"Is that a correct extract from your report?

A. Yes, sir.

Q. Now, the Warren survey was made in 1839?

A. Yes, sir.

Q. At a time antedating the settlement of this part of the country?

A. Yes, sir.

Q. As stated in your report, Warren and his assistants were compelled to transport themselves into a new and unsettled country and to subsist as best they could?

A. That is very true.

Q. At that time, Mr. Kidder, is it not a fact, from your investigation that the land that you claim was omitted from the Warren survey was of little or no value?

A. Yes, sir, that would be my judgment.

Q. The work of these surveys in general features, as you stated in your report, was faithfully and well done?

A. Yes, sir, and that is brought out especially with reference to the section lines.

**Q. Furthermore, Mr. Kidder, is it not a fact, that with a remarkable degree of accuracy Warren has located all of his meander posts on or close to the contour line established by you of 173.09?**

**A. Yes, sir.**

**Q. So that with respect to the township and range lines, the section lines, corners and all meander posts, the Warren survey is, considering the conditions under which the survey was made, remarkably accurate?**

**A. Yes, sir."**

And attention is called to the fact that the Warren survey, a photographic copy of which plat, plaintiff's 6th offering, is inserted in this brief, shows no meander lines whatever, but merely what Mr. Kidder admits to be a line represented as the border of the lake, following smooth curves rather than straight lines and angles (Record, page 195).

Before discussing these facts and arguing the case therefrom we shall refer briefly to the salient legal principles.

I.

**The mode and practice of surveying the public lands are of statutory creation, the rule of surveying in the laying out of governmental subdivisions depending upon acts of Congress. In these acts no mention can be found of meander lines.**

**Section 2396** of the Revised Statutes (Act of February 11, 1805, Chapter 14, 2 Stat. L., 313) provides:

> "The boundaries and contents of the several sections, half-sections, and quarter-sections of the pub-

lic lands shall be ascertained in conformity with the following principles:

"First. All the corners marked in the surveys, returned by the surveyor-general, shall be established as the proper corners of sections, or subdivisions of sections, which they are intended to designate; and the corners of half and quarter sections not marked on the surveys, shall be placed as nearly as possible equidistant from two corners which stand on the same line.

"Second. The boundary lines, actually run and marked in the surveys returned by the surveyor-general, shall be established as the proper boundary lines of the sections, or subdivisions, for which they were intended, and the length of such lines, as returned, shall be held and considered as the true length thereof. And the boundary lines which have not been actually run and marked shall be ascertained, by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships where no such opposite corresponding corners have been or can be fixed, **the boundary lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the water course, Indian boundary line, or other external boundary of such fractional township.**

"Third. Each section or subdivision of section, the contents whereof have been returned by the surveyor-general, shall be held and considered as containing the exact quantity expressed in such return; and the half-sections and quarter-sections, the contents whereof shall not have been thus returned,

shall be held and considered as containing the one-half or the one-fourth part, respectively, of the returned contents of the section of which they may make part."

It will be particularly noted that the statutory directions are that the **water course** in the case of a fractional township, such as that with which we are here dealing, and not any arbitrary line, is to be taken as the boundary of the governmental subdivision. That is to say, the statute specifically directs in cases where **water courses** exist, that the natural object shall itself be taken as the boundary; and any proper survey, therefore, must be to the **water course.**

This would be particularly true where, as here, the water course was navigable and, hence, never the property of the Federal Government, and where, the surveyor being deputized to survey the governmentally owned land, finds the property which he is sent to survey bounded by a large body of water, covering land the property of the State, the boundary between which and the property of the United States is a definite natural line, that of ordinary high water.

The main point, however, is that **the statutory directions for surveying require the survey to the water course.** Meander lines along the water course, hence, are not the creatures of statutes; but, as has often been decided by this Court, are run merely for convenience by the surveyors for the purpose of defining generally the sinuosities of the banks of the water course, which by the statute, constitute the true boundary.

In *St. Paul & P. R. Co. v. Schurmeier, 7 Wallace, 272,* it was said:

> "Meander lines are run in surveying fractional portions of the public lands bordering upon navigable rivers, not as boundaries of a tract, but for the purpose of defining the sinuosities of the banks of a stream, and as the means of ascertaining the quantity of the land in the fraction subject to sale, and which is to be paid for by the purchaser. In preparing the official plat from the field notes the meander line is represented as the border line of the stream, and shows to a demonstration that the water course, and not the meander line as actually run on the land, is the boundary."

In *Hardin v. Jordan, 140 U. S., 371:*

> "The meander lines run along or near the margin of such waters are run for the purpose of ascertaining the exact quantity of the upland to be charged for, and not for the purpose of limiting the title of the grantee to such meander lines. It has frequently been held, both by the Federal and State Courts, that such meander lines are not intended for the purpose of bounding and abutting the lands granted upon the waters whose margins are thus meandered; and that the waters themselves constitute the real boundary."

*Mitchell v. Smale, 140 U. S., 406:*

> "The pretense for making such surveys (referring to resurveys such as made here by Kidder), arising from the fact that strips and tongues of land are found to project into the water beyond the meander line run for the purpose of getting its general con-

tour, and of measuring the quantity to be paid for, will always exist, since such irregular projections do always, or in most cases, exist. The difficulty of following the edge or margin of such projections, and all the various sinuosities of the water line. is the very occasion and cause of running the meander line, which by its exclusions and inclusions of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. **The official plat made from such survey does not show the meander line, but shows the general form of the lake deduced therefrom, and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream."**

Again:

"The existence of such projecting tongue is entirely consistent with the water or lake being the natural boundary of the plaintiff's land, which would include the said projection, if necessary, in order to reach the said boundary. It has been decided again and again that the meander line is not a boundary, but that the body of water whose margin is meandered is the true boundary."

*Producers Oil Company v. Hanszen, 238 U. S., 339:*

"They (the authorities) unquestionably support the familiar rule relied on by counsel for the oil

> company that, in general, meanders are not to be treated as boundaries, and when the United States conveys a tract of land by patent referring to an official plat which shows the same bordering on a navigable river, the purchaser takes title up to the water line."

With this established principle in mind, we deem it necessary to refer only briefly to the salient facts of the several cases.

In 1839 Township 20 North, Range 16 West, was surveyed by A. W. Warren, United States Deputy Surveyor. The official plat exhibits an area of 10,328.09 acres returned as surveyed. With respect to this survey, Mr. Kidder's report in connection with his original investigation shows (Record, page 193):

> "With only one exception the original sectional lines as terminated upon the border of Ferry Lake show a proper recognition of the mean high water elevation of the raft period. I would not criticise the surveyor's judgment in the location of but one meander corner in the entire township; and the meander lines along the lake front in Sections 1, 5, 8, 11, 17, 20, 26, 28, 31, 33 and 35, are reasonably correct.
>
> "The faithfulness of the early surveyors deputized by the United States to the performance of the great trust of establishing and marking for all time the lines defining the rights of her land patentees has been well demonstrated by the positive identification and recovery of the original lines after a

period far beyond the span of the average human life. The deputy surveyors were called upon to explore and map a wild and remote virgin forest and swamp, to transport themselves and equipment by primitive methods, and to subsist themselves largely by hunting and fishing as best they could."

* * * * * * *

"Q. The work of these surveyors in general features, as you stated in your report, was faithfully and well done?

A. (Page 82). Yes, sir; and that is brought out especially with reference to the section lines.

Q. Furthermore, Mr. Kidder, is it not a fact, that with a remarkable degree of accuracy Warren has located all his meander posts on or close to the contour line established by you of 173.09?

A. Yes, sir.

Q. So that, **with respect to the township and range lines, the section lines, corners, and all meander posts, the Warren survey is, considering the conditions under which the survey was made, remarkably accurate?**

A. **Yes, sir.**"

Any attempt, therefore, to impeach the general accuracy of Warren's survey, either for fraud, gross error, incompetency or carelessness, must necessarily fail.

Mr. Kidder, the Government's chief witness, admits that all of Warren's township and section work was carefully and properly done; and, furthermore, admits that wherever Warren purported to set a meander post upon the banks of Ferry Lake such post was set with a remarkable degree

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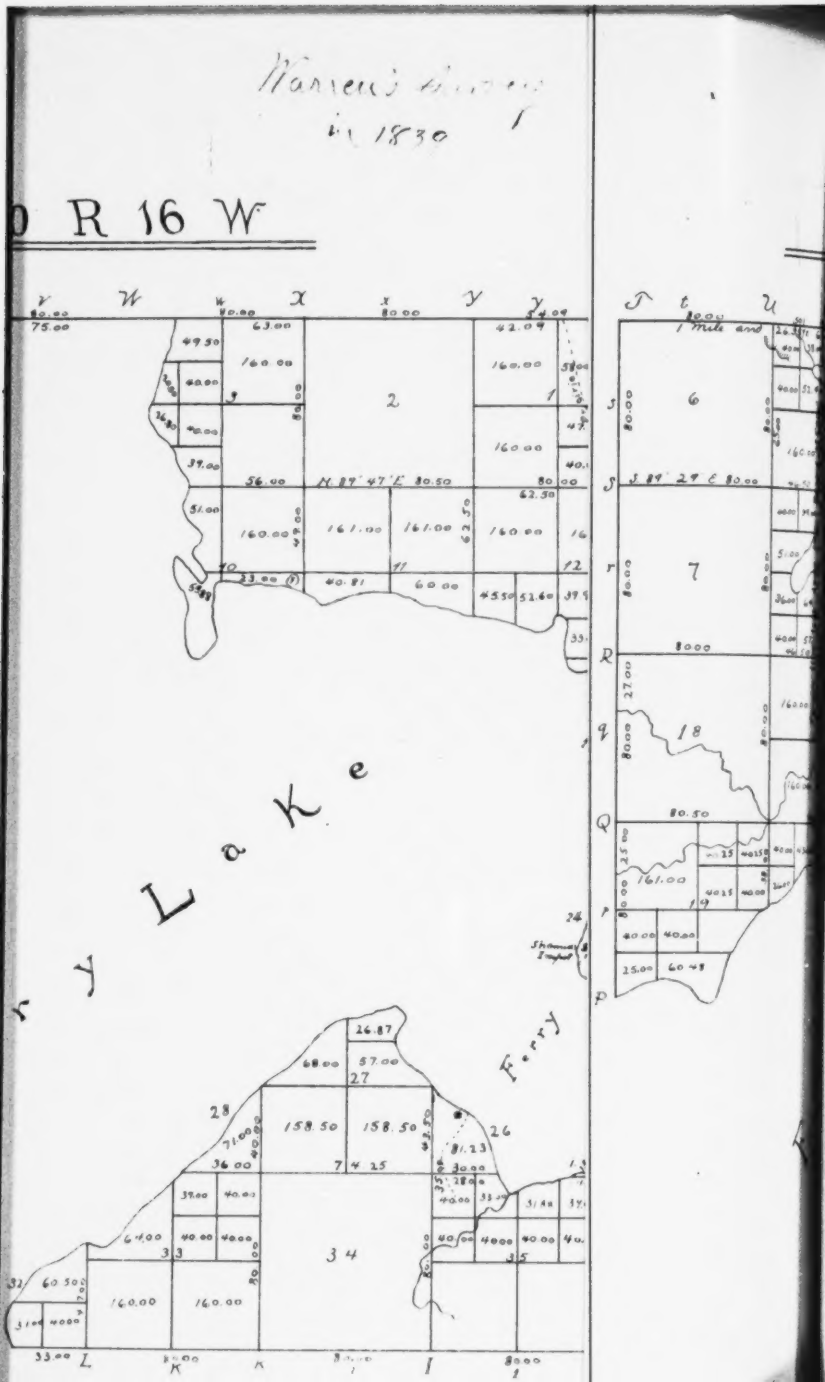
Warren's Survey
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of accuracy, close to the elevation of 173.09 agreed upon as the mean high water at the period of the survey.

Each of Warren's section lines projecting to the lake terminate at a post set by him on this same contour line.

The cases before the Court now concern the small strips or projections intervening between the meander lines as shown by Warren's field notes and the 173.09 contour line denoting the ordinary high water line at the date of Warren's survey. It will be noted, however, that the **official plat** (conformably with the comments of this Court in the cases above cited) **indicates no meander lines, but shows the sinuosities of the lake as the boundary; not as straight lines, but with the natural curves to the banks of such body of water.** (See Exhibit 6, sent up in the original, a photographic reproduction of which is inserted opposite this page.) That is to say, **Warren's plat,** made up from his field notes, **shows the fractional sections as abutting on the lake;** and it is an admitted fact that the exterior lines of all the sections do terminate at the true high water mark.

Considering the fact that the surveys were made in wild territory and that the land at that time was of practically no value, what Warren did was the reasonable and practical thing of approximating the water's edge without consuming the public's time and money in making an overexact retracement of the contour of the high water.

We must eliminate from the consideration of these cases the large areas of land left out, west of the meander line, in Section 10. This was a large body of land which Warren did not pretend to survey, for reasons shown in the transcript in the *Hanszen* case filed in evidence by the Government; that is, he did not attempt or pretend to survey them, stopping at a deep slough then existing.

See dissenting opinion of Mr. Justice Provosty in *Producers Oil Company v. Hanszen, 61 So., 760:*

> "The first survey of T. 20, R. 16, Parish of Caddo, was made in 1839. At that time Ferry Lake occupied the greater part of the township. **The surveyor left out of his survey a small island separated from the mainland by a slough."**

Involved in these consolidated suits are 8.38 acres of land in Section 3 (No. 160); about 7.50 acres in Section 10 (No. 163); 27.87 acres in Section 13 (No. 162); 11.49 acres in Section 24 (No. 161).

With respect to the small area in Section 3, Mr. Kidder admits (page 196) that the Warren survey included an area of lake land larger than the quantity of high land which he claims to have omitted from the survey; specifically, that in the Warren survey, if the meander line is to be taken as the boundary there would be included 10.9 acres of land which never belonged to the United States and there would be omitted 8.38 acres of land which, according to Kidder, should have been included. With respect to this suit, therefore, (No. 160), no lands were omitted

from the survey under any theory of the case, since the Government was paid for **more** land in the subdivision that it ever at any time owned.

The same is true in Section 24, involved in No. 161. (See Record, No. 160, page 198; also see Kidder's resurvey map, plaintiff's exhibit.

Mr. Kidder further testifies (page 203) that, taking the whole of the northern shore of Ferry Lake, including Sections 3, 10, 11, 12, 13 and 24, surveyed by Warren, the area of land lying between the Warren meander line and Kidder's establishment of the 173.09 contour line was 69.56 acres. In other words, that, considering the meander line as the boundary in place of the water's edge, there would have been omitted from Warren's survey an area of 69.56 acres; while the same meander lines included within the survey and showed as land an area actually lying in the lake and never belonging to the Government, of approximately 44 acres. So that, taking the entire strip of meandered line, from its northern intersection with the boundary line of Section 3 to its intersection with the range line at the southeast corner of Section 24, Warren's meander line, which was intended to denote only in a general and reasonably correct way the sinuosities of the water's edge would, if taken as the boundary, reduce the actual acreage of governmentally owned land only by the difference between 69.56 acres and 44 acres, or **25.56 acres.**

Certainly with respect to all this northern shore of Ferry Lake it is far-fetched to say that this trifling area dis-

tributed through six sections in any way militates against the accuracy of Warren's work.

Regarding the entire Warren survey, therefore; considering the fact that it is admitted to have been done with a remarkable degree of accuracy; that the intersections of the exterior lines of the sections with the lake are admitted to have been placed accurately upon the proper high water line; and that the plat of the township shows the sinuosities of the lake and not the meander line as the boundary of the land abutting upon the lake: it follows that the fractional sections adjoining the lake are bounded by the mean high water mark, and not by any meander line. Especially is this demonstrated by the trivial quantity of land that would have been omitted from the survey in the sections here in controversy, had the meander line been intended as the boundary. If this were not true, then it would follow that in no case would any one ever be a littoral proprietor upon any lake in the United States.

II.

There are some exceptional cases in which meander lines have been taken as boundaries, but an analysis of these cases demonstrates that the principles there involved depended upon their peculiar facts, which could have no application to the cases at bar. Such cases are:

*Niles v. Cedar Point Club, 175 U. S., 308.*

*French-Glenn Live Stock Co. v. Springer, 185 U. S., 47.*

*Chapman & D. Lbr. Co. v. St. Francis Levee District, 232 U S., 186.*

*Security Land & E. Co. v. Burns, 193 U. S., 167.*
*Horne v. Smith, 159 U. S., 40.*
*Gauthier v. Morrison, 232 U. S., 457.*
*Producers Oil Company v. Hanszen, 238 U. S., 325.*
*Wilson & Company v. United States, 245 U. S., 24.*

Let us see what each of these cases involved.

In the *Niles* case the surveyor had meandered a marsh, shown as such in the field notes and plat. The marsh lay between the meander lines and Lake Erie. The Court held that as the surveyor had deliberately meandered the marsh, as such, the line was run as one of boundary between the marsh and high land and was in no sense a meander of the lake.

*French-Glenn case, 185 U. S., 47:*

In this case there was no lake at all as represented on the plat. The Court said:

> "While **if there was a lake abutting on or to the north of the lots, the plaintiff in error would take all land between the meander line and the water,** and all accretions, it was competent for the defendant to show that there was not, at the time of the survey, nor since, any such lake and to contend that in such a state of facts, there could be no intervening land and no accretion by reliction."

*Chapman & Dewey case, 232 U. S., 186:*

The proof showed and the Court held, that there was never any lake such as was pretended to be meandered. The facts were that the surveyor meandered a body of swamp land and called it a lake; and the Court simply held that the surveyor by designating a body of land as "lake" did not convert it from land to water.

> The *Wilson case, 245 U. S., 24,* involved the same state of facts.

Or the *Burns case, 193 U. S., 167:*

> "There was, in truth, no such survey as was called for by the contract between the government and the surveyor. The exterior lines, with the exception of the south line of the township, were run, but no survey of the interior of the township was ever made and no section lines thereof were ever run, with one possible exception, and in truth, the survey as a whole was a fraud. **No such body of water at the place indicated on the plan of survey then existed or now exists.** On the contrary, the lake is from half a mile to a mile away from what is called its meander line on the plat of survey filed by the surveyor. It covers only about 20 acres in the southeast corner of Sec. 4. **The surveyor never was on the ground and never saw the lake he intended to measure, and the lake never existed where he laid it down in his fraudulent survey.** If the side lines of the various lots were protracted in their course, those of Lot 3 would never reach the lake, and those of Lots 5 and 6 would not reach the lake within the limits of Sec. 4, while the south line of Lot 7 would touch the lake, and few feet of frontage

would then be secured, and the lot would then have 139 instead of 25.25 acres. The side lines of Lots 5, 6 and 7, if protracted, would instantly cross the protracted side lines of Lot 3. There are at least 1,000 acres of high, tillable land between the actual water line of the lake and the meander line as returned by the field notes and the plat of survey, and the land is covered by trees of more than a century's growth and growing down to the water's edge. In order to bound on the lake, the lots would exhibit a totally different form from that which they take on the plat of survey and such boundary would violate every rule of statutory survey, by conveying lands not conforming to the system adopted by the government and carried out ever since its adoption."

* * * * * * *

"The fraudulent character of the survey, the non-existence of the lake within at least half a mile of the point indicated on the plat, the excessive amount of land claimed as compared with that which was described and stated in the patents and actually purchased and paid for, the difficulty in reaching the lake at all, and the necessity, in order to do it, of going outside of Section 4 (with the exception as to a small part of Lot 7), the section in which the description and plat placed all the land, all go to show that the lake ought not to be regarded as a natural monument within the cases, or within the principle upon which the rule is founded, and therefore the courses and distances by which the amount of land actually purchased and paid for was determined, ought to prevail.

> "The non-existence of a lake anywhere near the spot indicated on the plat is a strong reason for regarding the so-called meander line as one of boundary instead of a true meander line, and **when the plat itself is the result of a gross fraud, and indeed is entirely founded upon it, the reason for refusing to recognize the lake as a boundary becomes apparent.**"

In *Horne v. Smith, 159 U. S., 40,* the surveyor had meandered a bayou between which and the Indian River there was a large body of land. The surveyor reported that he had meandered Indian River, when, as stated, he did not meander such river, but, instead, the bayou, lying some distance from it. The Court merely held that the bayou, in fact meandered, and not the river which was never meandered, was the boundary.

*Gauthier v. Morrison, 232 U. S., 457:*

In this case, again, the surveyor meandered a body of high land, calling it a lake. Of course, he could not, merely by calling land "lake", convert it into water or affect the Government's title. The Court said:

> **"It will be perceived that we are not speaking of** land, which was covered by a permanent body of water at the time of the survey and thereafter was laid bare by a subsidence ef the water, nor yet of **comparatively small areas which sometimes lie within meander lines, reasonably approximating the shores of permanent bodies of water."**

The *Hanszen case, (238 U. S., 325)*, held that intrinsic evidence of the field notes showed an intention upon the part of the government surveyor not to treat the water as the boundary, but to survey out a definite acreage; the field notes themselves showing considerable bodies of land lying outside of the meander lines. Intrinsic and extrinsic evidence also showed the intention and purpose to survey a definite body and quantity of land, rather than to survey to the water's edge.

The Court, after laying down the general rule that meander lines are not to be treated as boundaries (**"when the United States conveys a tract of land by patent referring to an official plat which shows the same bordering on a navigable river, the purchaser takes title up to the water line"**) held that "facts and circumstances may be examined and **if they affirmatively disclose an intention to limit the grant to actual traverse lines,** these must be treated as definite boundaries."

Analyzing these cases, it will be seen that the only decisions of this Court in which meander lines have ever been held to be boundaries were in such cases as these:

1. Where the surveyor meandered land and called it water, when no such body of water existed at all.

2. Where the surveyor meandered marsh land lying around a body of water, showing in his field notes that he meandered a marsh as such, and not the water.

3. Where no such body of water existed as shown by the plat at any reasonable distance from the so-called meandered lines.

4. Where intrinsic and extrinsic evidence showed the intention to survey a certain acreage limited by the so-called meander lines, instead of surveying to a water boundary.

5. In case of gross fraud such as was present in the *Burns case*.

To which may be added the case of *Horne v. Smith, supra*, where the surveyor meandered one stream, representing that he had meandered another, in which case the grantee was held to the water boundary of the stream actually meandered.

To say that any of these statements of facts, or the reasons impelling the decisions in such cases, is present in the cases at bar, would be to confess ignorance of the record. There was no fraud. Kidder compliments Warren's work and speaks in the highest terms of its accuracy.

Ferry Lake existed in 1839 and Warren's field notes and plat clearly disclose the intention to make the water line the boundary. Kidder admits and the evidence demonstrates that wherever Warren placed a meander post, whether on the extension of his section lines to the lake or otherwise, the position of such post was with a remarkable degree of accuracy placed on the 173.09 contour line. Nothing in the field notes or in the plat or otherwise discloses the existence of land between the meander line and

the lake; on the contrary, the plat demonstrates conclusively the intention to make the water line the boundary.

All that remains of the Government's contention is that there are small strips of land or projections which were left between the meander and high water mark. This, as the Court pointed out in *Mitchell v. Smale*, is the case in every survey and arises out of the very nature of meander lines, which are intended only to mark with reasonable approximation the general sinuosities and configuration of the water line.

The facts in that case were that a fractional quarter section was shown on the government plat as abutting on the lake and as containing only 4.53 acres. A resurvey was, as here, ordered by the Department and made, and disclosed that between the meander line as run and the actual high water mark of the lake was an area of about 25 acres. So that the fractional quarter section instead of containing 4.53 acres, really contained about 29.53 acres. It was held, however, that the patentee of the fractional quarter section took to the water's edge and that the second survey could not in any manner affect or impair his rights; the Court holding that **since the official plat showed the lake as a boundary, and since there was no proof of fraud or plain and obvious mistake or of intention to run the meander line as the boundary instead of as a meander, that the patent according to the original plat and field notes carried to the water's edge.**

In none of the cases at bar is the excess comparable with that in *Mitchell v. Smale*, and it is submitted that on principle and on authority, these defendants' titles cannot be deprived of their riparian character.

A little reflection over the surrounding circumstances and conditions makes it plain that the only reason why Warren's meander line does not more closely follow the high water mark is that Warren did not consider it justifiable from the standpoint of public time and money to make an absolutely accurate survey of every minute curve in the water's edge. He did project every section line to the water's edge and set his meander posts upon the correct elevation. He ran other lines to the water's edge. In every case he placed his meander corner at the intersection of such line with the bank at the proper elevation. He did not consider it necessary to make a survey between such posts; but simply drew the general contour of the lake between the posts which had been placed accurately at the proper mean high water elevation.

The little strips and tongues that remained outside such meander were negligible; and when one considers that in thus tracing the water's edge, Warren included on the land side of the meander almost as much of lake as he omitted of land on the water side, it will be seen, as respects the cases now before the Court, that the Government could have lost nothing.

These cases are typical of the class of litigation which always arises in the case of the discovery of oil. The little

tracts here sued for are in themselves inconsequential and would never have been noticed but for the discovery of oil. The cases deal with a survey made eighty years ago; a survey admitted by the government engineers to have been remarkably accurate when made. **If accurate when made,** considering conditions and instruments, **it still remains accurate,** for neither lapse of time nor improvement in and invention of new instruments for surveying can convert an accurate survey into an inaccurate one. The fact that more accurate work could have been done in 1839 with the instruments **now** in use, or with present conveniences cannot convert that into an erroneous survey, which was a correct and accurate one when made. If those responsible for the institution of this litigation had only considered that the cases had to be dealt with from the standpoint of **1839** and not of **1919,** these suits would never have been brought.

It is with respect submitted that the decree of the Circuit Court of Appeal in each of these cases is correct and should be affirmed.

Respectfully submitted,

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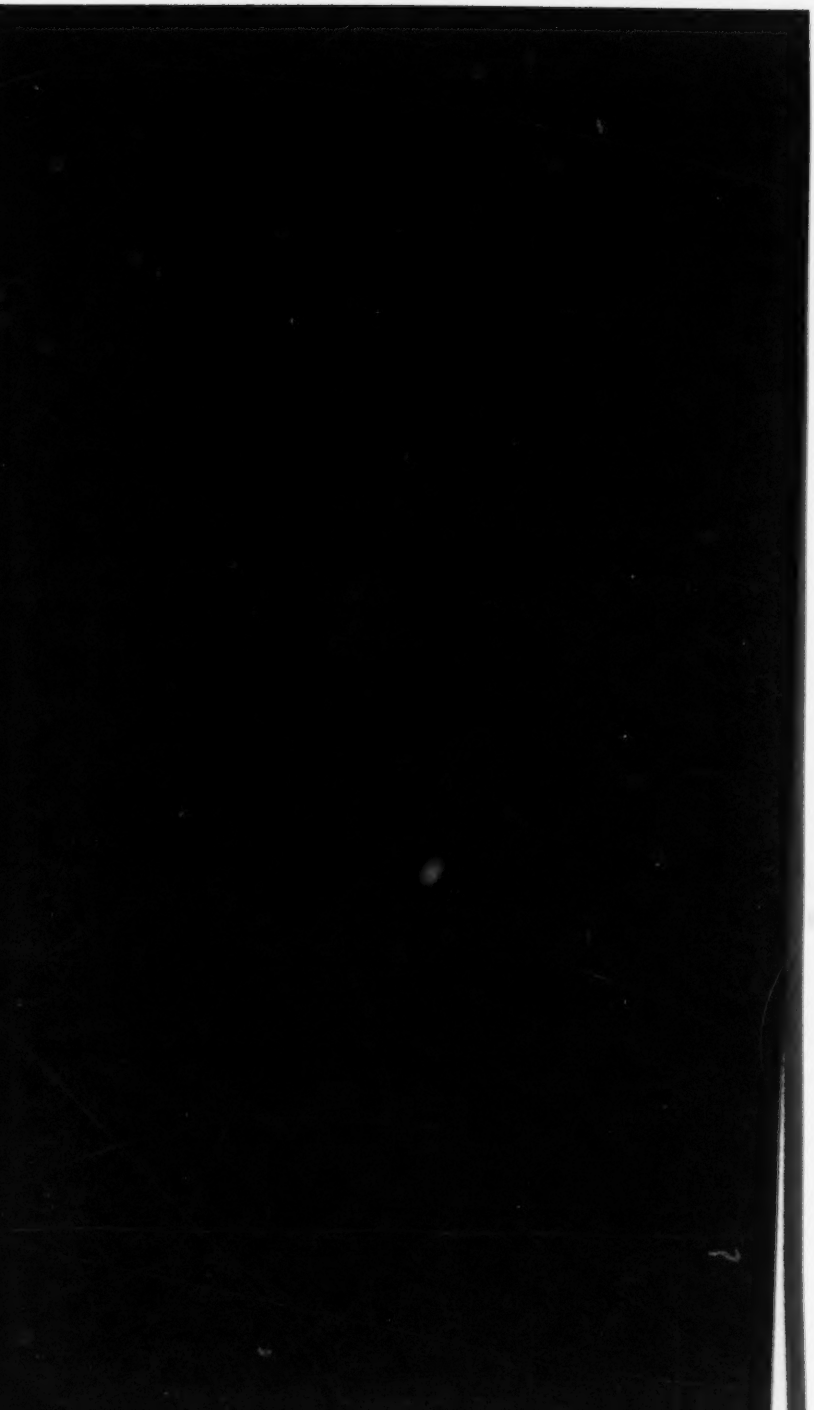

# In the Supreme Court of the United States.

OCTOBER TERM, 1922.

THE UNITED STATES OF AMERICA, Petitioner, *v.* A. C. LOUCKS ET AL. } No 191.

*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.*

## BRIEF FOR THE UNITED STATES.

### THE PLEADINGS.

The tract of land involved in this case is lot 1 of section 27. It contains 14.13 acres (60). In its bill of complaint the Government alleged that it owned this land; that the official plat of survey was approved March 28, 1917; that the President, on December 15, 1908, withdrew from settlement, entry, and all other forms of appropriation, all of the public lands in the township in which this section is located, as well as others not here in controversy; that on July 2, 1910, under authority of the act of June 25, 1910 (36 Stat. 847), the previous withdrawal order was continued in full force and effect; that notwithstanding, the defendants, without authority, in bad faith, took possession of the land and drilled a well,

out of which oil and gas were taken; and that this was done under color of a pretended claim of ownership. Appropriate relief was prayed for (3).

In their answer defendants admit the drilling of the well and the extraction of oil, but deny that the land belongs to the United States. On the contrary, it is alleged that on June 1, 1860, the United States issued a patent to Matthew G. Jackson embracing the northeast fractional quarter of section 27; that this patent embraces the land in controversy; and that the defendants deraign title from the patentee. The defendants also allege that the oil taken amounts to $432.31, and that the cost of drilling and production was $8,439.37, and that even if it should be held that the United States has the title to the land, no money judgment should be rendered (9, 13).

The master, to whom the case was referred, found in favor of the Government, but allowed the defendants the cost of drilling and operation, amounting to $8,439.30 (40, 41, 85). The value of the oil amounted to only $494.08 (41, 79, 85). It appearing, however, that Loucks, the lessor, had received $61.75 as royalty, and that the Gulf Refining Company, to which the lessee had sold the oil, had received $50.42 (79, 85), representing the charge it made the lessee, at the rate of ten cents per barrel, for transporting the oil from the tanks of the lessee located on the property in question to its own tanks some distance away (79), the master recommended that a judgment be rendered against Loucks for $61.75 and against the Gulf Refining

Company for $52.42 (41). (The master probably intended $50.42, which represents the pipage earnings (79, 85).) The United States and the Gulf Refining Company filed exceptions, the former on the ground that the cost of drilling and operation should have been disallowed (42), the latter on the ground that it ought not to be held liable for the pipage earnings (43). All exceptions were overruled (44) and a decree entered in conformity with the master's report (46). The petition of the Gulf Refining Company for a rehearing was denied (49) and all parties appealed (50, 52). The United States assigned error on the ground that the court was wrong in allowing the defendants the cost of drilling and of operation (51), the Gulf Refining Company on the ground that the court was wrong in rendering a judgment against it for $52.42 (53), and the other defendants on the ground that the court was wrong in adjudging the land to belong to the United States (55).

The Court of Appeals found that the property did not belong to the United States (90), and accordingly a decree was rendered remanding the case with directions to dismiss the bill of complaint, and ordering the Government's cross appeals to be dismissed (97).

The amount in controversy being below $1,000, the case comes here on certiorari (99).

### THE FACTS.

By a stipulation entered into between the parties at the outset of the trial (58), all of the testimony,

oral and documentary, taken in the *Jeems Bayou Fishing & Hunting Club case* (No. 119 in this court), and in the *Greene case* (No. 192 in this court), became a part of the record in this case. Inasmuch as both of these cases have already been briefed in this court, it will only be necessary, in this statement of the facts, to call attention to the additional testimony that pertains to this case alone.

The land in controversy, lot 1, 14.13 acres, in the northeast fractional quarter of section 27, adjoins lots 2 and 3 in the northwest quarter, which are involved in the *Greene case* (No. 192 in this court). In other words, all of these lots are in the same section (60). The land is similar to the land in that suit, the elevation ranging from the 173.09-foot contour to a 190-foot contour. The lot in question also adjoins two lots in section 23, 17.74 acres (69), which touch the shore of the lake (61). In other words, there is a body of land lying between Warren's meander line, where we claim that title under the patent stops, and the edge of the lake, containing an area of 31.87 acres, 14.13 acres comprising the area of the lot in controversy, and 17.74 acres comprising the area of the two lots immediately to the north in section 23. Warren surveyed no portion of section 23, erroneously assuming that the land in that section was covered by Ferry Lake. Nor did he establish any section lines between sections 27 and 23 (61). As already stated, the lot in controversy adjoins the land in controversy in the *Greene case*, in the north-

west quarter, and also adjoins the two lots just mentioned in section 23. It is a part of one compact body, with a total area of 97.64 acres (61, 64), all of which was omitted from the Warren survey.

Coming now to Warren's so-called meander line across the north part of section 27, we find it begins at the point where the east side of that section intersects the shore. Throughout five of its courses it closely follows the actual margin of the lake. At the end of the fifth course it abruptly leaves the lake, almost at a right angle, and takes three more courses, 6, 7, and 8, before it reaches the north and south section line on the west side of the section. (See Exhibit 13, *Jeems Bayou Fishing & Hunting Club case.*) This meander or traverse line from the eastern boundary of section 27 to angle point 5, is a very correct one, following the border of Ferry Lake with precision for these five courses. But at angle point 5 Warren turns from the border of Ferry Lake at almost a right angle and ascends to ground 17 feet above mean high-water elevation. His traverse line from angle point 5 through section 27 is on high upland, with the turning points far removed from the border of the lake, the elevation in places being as high as 27 feet above the lake (62). From angle point 5 to angle point 8 (point 8 being on the western boundary of section 27) the line does not follow the border of the lake. In other words, it parallels the shore in the first five courses with substantial accuracy, but not in the last four, there being no relation

whatever between Warren's traverse line through the last four courses and the sinuosities of the lake (63). At angle point 5, where, as already stated, he left the lake almost at a right angle, his line runs south 70 degrees west, whereas if he had continued to follow the margin of the lake his line would have run north 8 degrees west, a difference of 62 degrees (64). In other words, he erroneously turned his course at angle point 5 (64). From angle point 5, which is close to the 173.09 foot contour, the ascent is 17 feet in the first course. The next course ascends to an elevation of 27 feet, and the next, which descends to the bottom of a ravine and then ascends, reaches an elevation of 37 feet above the lake level. The next descends into a ravine and immediately ascends on the opposite side to an elevation of 22 feet above the border of the lake, when it descends again on its way to the western boundary of the section (65). The entire area omitted by Warren from his survey of sections 23 and 27 may be compared to an irregular rectangle, approximately 4,000 feet in length and 1,000 feet in width, embracing an area of 97.64 acres (65). As already stated, the first five courses of Warren's traverse line in section 27, counting from the first one at the eastern boundary of the section, is a correct meander line, but the remaining four courses, the last one of which connects with the western boundary of the section, is an incorrect meander line, the error being very apparent and manifest (65). The land is the same on both

sides of that part of the meander line which is erroneous (66). The first five courses are good, but the last four are bad, being absolutely incorrect and the error apparent (73). The length of that portion of Warren's meander line which is bad is 4,290 feet. If he had run it as he should, and as Kidder afterwards ran it, the length would have been 6,800 feet (64).

The patent under which the defendants deraign title, which was introduced in evidence (81), is printed in full in the record (86). It conveys the northeast quarter of the southeast quarter and the northeast fractional quarter of section 27, 123.49 acres all told. The southeast quarter of section 27 is not fractional. According to the official plat of Warren's survey the area of the land in the northeast quarter, which is fractional, contains 83.87 acres, divided into two tracts, one of 57 acres and the other of 26.87 acres. If, therefore, the defendants prevail, the effect will be, under a patent which conveys 83.87 acres in the fractional northeast quarter, to pass title to an additional 31.87 acres lying immediately in front (14.13 acres in section 27 and 17.74 acres in section 23). As the Court of Appeals said, "While these suits involve no part of the land described as section 23, the title to the acreage is necessarily disposed of by the decision of these cases" (92).

There is of course no controversy that the official plat of Warren's survey represents Ferry Lake as bordering on the fractional northeast quarter as well as the fractional northwest quarter of section 27.

Whether Warren ever intended to meander section 27 is a matter of conjecture. The field notes show that in running the *section* line between sections 26 and 27, he went to the *lake*, where a post was set. Similarly, in running the *section* line between sections 27 and 28, he again ran the line to the *lake*, where he set another post. Whether his traverse line between these posts was intended as a meander line is a mere matter of conjecture. The only thing we have to go by is the heading "Front of section 27," followed by nine courses and distances. There is no specific statement that he is following the border of Ferry Lake (66–67).

## ASSIGNMENTS OF ERROR.

The assignments of error which we now make in this court are:

1. That the Court of Appeals was without authority to reverse that part of the decree of the District Court adjudging title to be in the United States, none of the defendants having taken any exception to that part of the master's report finding the United States to be the owner of the disputed area.

2. That the Court of Appeals was wrong in adjudging that the patent issued to Jackson on June 1, 1860, embracing the northeast fractional quarter of section 27, T. 20, R. 16, according to the official plat of the survey returned in the General Land Office, operated to pass title to the land lying between Warren's so-called meander line and the edge of

Ferry Lake. The Court of Appeals should have held that title under the patent stopped at this so-called meander line, and that the land in controversy is the property of the United States.

3. That the decree of the District Court was wrong in allowing the defendants the cost of drilling, and that the Court of Appeals should have affirmed that part of the decree of the District Court adjudging title to be in the United States, but should have set aside the money judgment, with directions to enter a new judgment, with cost of drilling disallowed.

## ARGUMENT.

The propositions of law involved are identical with those in the *Greene case*, No. 192 in this court, involving adjoining lands. We accordingly refer the court to our brief in that case, a copy of which will be furnished opposing counsel.

There is, however, a point of law present in this case but not in that.

THE COURT OF APPEALS WAS WRONG IN REVIEWING AND SETTING ASIDE THAT PART OF THE DECREE OF THE DISTRICT COURT WHICH AWARDED TO THE UNITED STATES TITLE TO THE DISPUTED AREA, NONE OF THE DEFENDANTS HAVING TAKEN ANY EXCEPTIONS TO THAT PART OF THE MASTER'S REPORT WHICH FOUND THE TITLE TO BE IN THE UNITED STATES. THIS BEING THE CASE, THE COURT OF APPEALS WAS WITHOUT AUTHORITY TO REVIEW THE DECREE.

*Topliff* v. *Topliff*, 145 U. S. 156, 172.
*Riverside, etc.*, v. *Stebler*, 214 Fed. 703, 705.

The decree of the Circuit Court of Appeals, it is submitted, should be reversed.

JAMES. M. BECK,
*Solicitor General.*
WILLIAM D. RITER,
*Assistant Attorney General.*

NOVEMBER, 1922.

○

# UPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1922.

## No. 191.

## THE UNITED STATES OF AMERICA, PETITIONER.

vs.

## A. C. LOUCKS ET AL.

WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

INDEX.


| | Original. | Print. |
|---|---|---|
| tion in United States Circuit Court of Appeals for the Fifth Circuit | a | 1 |
| n District of Louisiana | 1 | 1 |
| ord from the District Court of the United States for the West- | | |
| Stipulation as to original exhibits | 1 | 1 |
| Bill of complaint | 5 | 3 |
| Motion of defendant Gulf Refining Co. to dismiss bill | 14 | 8 |
| Order overruling motion to dismiss | 15 | 9 |
| Answer of defendants, Star Oil Co., and K. W. and C. W. Brown, and set-off and counterclaim | 16 | 9 |
| Reply of plaintiff to set-off and counterclaim | 20 | 12 |
| Answer of defendant, A. C. Loucks, to bill of complaint | 22 | 13 |
| Interrogatories to defendants | 23 | 13 |
| Answer of Star Oil Co. to interrogatories | 28 | 15 |
| Answer of Gulf Refining Co. to interrogatories | 32 | 17 |
| Motion of plaintiff for decree pro confesso as to defendant, R. L. Stringfellow, and order granting same | 36 | 19 |
| Order appointing special master | 37 | 20 |
| Report of special master | 38 | 20 |
| Exception of plaintiff to report of special master | 76 | 42 |
| Exception of defendant, Gulf Refining Co. to report of special master | 79 | 43 |
| Opinion, Foster, J. | 80 | 44 |
| Decree | 84 | 46 |
| Petition of defendant, Gulf Refining Co., for rehearing | 88 | 49 |
| Order denying petition for rehearing | 90 | 50 |
| Petition of plaintiff for appeal, and order allowing same | 90 | 50 |
| Assignment of errors | 92 | 51 |
| Petition of defendants for appeal, and order allowing same | 94 | 52 |
| Assignment of errors of defendant, Gulf Refining Co | 96 | 53 |

| | Original. | Print. |
|---|---|---|
| Bond of defendants on appeal | 98 | 54 |
| Assignment of errors of A. C. Loucks et al., defendants | 100 | 55 |
| Stipulation of counsel as to transcript | 102 | 56 |
| Note of evidence taken before special master | 106 | 58 |
| Stipulation as to certain evidence | 106 | 58 |
| Offers of documentary evidence for plaintiff | 107 | 58 |
| Testimony of Arthur D. Kidder | 107 | 59 |
| Lester L. Clement | 124 | 69 |
| Dr. Henry C. Cowles | 126 | 70 |
| Lester L. Clement (recalled) | 130 | 72 |
| Lionel L. Janes | 132 | 74 |
| Prof. Frank Leverett | 136 | 76 |
| James W. Neal | 140 | 79 |
| Motion of defendants to strike certain testimony, order overruling same, and exception thereto | 144 | 81 |
| Offers of documentary evidence for defendants | 145 | 82 |
| Testimony of K. W. Brown | 147 | 83 |
| Exhibit No. 1.—Statement of pipe-line runs | 152 | 85 |
| Exhibit No. 2.—U. S. Patent No. 14454 to Matthew G. Jackson | 153 | 86 |
| Exhibits 3–14, inclusive.—Described (not set out) | 155 | 87–89 |
| Clerk's certificate | 159 | 89 |
| Argument and submission | 160 | 90 |
| Opinion, King, J | 161 | 90 |
| Judgment | 174 | 97 |
| Clerk's certificate | 175 | 98 |
| Writ of certiorari and return | 176 | 99 |

United States of America, United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, circuit judges:

A. C. LOUCKS, STAR OIL COMPANY, AND GULF REFINING Company of Louisiana, Appellants and Cross Appellees,
*versus*
THE UNITED STATES OF AMERICA, APPELLEE AND CROSS Appellant.

Be it remembered, That heretofore, to wit, on the 21st day of April, A. D. 1920, a transcript of the record in the above-styled cause, pursuant to an appeal and cross appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3525, as follows, to wit:

1 United States District Court, Western District of Louisiana, Shreveport Division.

UNITED STATES OF AMERICA, *versus* A. C. LOUCKS, ET ALS. — No. 1165—In equity.

Appeal taken by defendants, and cross appeal taken by plaintiff to the United States Circuit Court of Appeals, Fifth Circuit.

*Stipulation as to original exhibits.*

Filed in U. S. Circuit Court of Appeals May 25th, 1920.

In the District Court of the United States for the Western District of Louisiana.

United States v. C. W. Lane et al., No. 1153.
United States v. Charles J. Greene et al., No. 1155.
United States v. Jeems Bayou Fishing & Hunting Club et al., No. 1157.
United States v. Gulf Refining Company of Louisiana, No. 1158
United States v. W. H. Enders et al., No. 1160.

United States v. Southwestern Gas & Electric Co. et al., No. 1162.
United States v. J. M. Walling et al., No. 1163.
United States v. Mrs. Jessie M. LaRobadierre et al., No. 1164.
United States v. A. C. Loucks et al., No. 1165.

2 *Stipulation of counsel.*

In the above numbered and entitled suits it is agreed by and between counsel for all parties as follows, to wit:

That, whereas there have been sent up to the United States Circuit Court of Appeals certain maps and exhibits in the original for reproduction in each of the several transcripts, namely:

1. Plat of survey made by A. W. Warren, deputy surveyor, approved August 31, 1839.
2. Field notes of the Warren survey.
3. Resurvey plat of township 20 north, range 16 west, approved by the Commissioner of the General Land Office, July 24, 1916.
4. Supplemental plat of township 20 north, range 16 west, approved March 28, 1917, by the Commissioner of the General Land Office.
5. Supplemental topographic plat of township 20 north, range 16 west, approved March 28, 1917, by the Commissioner of the General Land Office.
6. Illustrative profile, marked "Plaintiff's Exhibit F."

Whereas all of the above suits have been appealed from the United States District Court for the Western District of Louisiana to the United States Circuit Court of Appeals for the Fifth Circuit, and all of said plats and exhibits, with the exception of

3 the illustrative profile above mentioned, were included in the original in the transcript of appeal in the suit entitled United States v. Jeems Bayou Fishing & Hunting Club et al., No. 1157; and

Whereas exhibits numbered one to five, inclusive, are applicable to all of said suits, and Exhibit No. 6 is applicable to suits Nos. 1153, 1158, 1162, 1163, and 1164; and

Whereas the cost of reproducing and incorporating the said exhibits in the several transcripts will be very large: Now, therefore,

It is agreed that in lieu of reproducing and including the said exhibits in the respective transcripts, the clerk of the United States Circuit Court of Appeals for the Fifth Circuit may bind or fasten together, in such manner as he may deem proper, the said plats and exhibits and index the same so that ready reference may be had to them in the cases to which they are applicable.

It is further agreed that the said exhibits shall be deemed and considered as a part of the records on appeal in each of the said suits, as far as applicable thereto, to the same extent as if the exhibits mentioned had been reproduced and incorporated in the several transcripts.

*is further agreed that this stipulation shall be printed in each* he transcripts of appeal heretofore filed in the United States Cir- Court of Appeals for the Fifth Circuit in suits No. 1157, 1155, ), and 1165.

is further agreed that a duplicate of this stipulation shall be filed in the United States District Court for the Western District of Louisiana and shall be copied into the transcript of appeal in suit No. 1153, entitled "United States v. C. W. e et al., the record in which case will, by stipulation, be made of the record on appeal in suits Nos. 1158, 1162, and 1163 and .

hus done and signed in duplicate this 18 day of May, 1920.

ROBERT A. HUNTER,
*Attorney for Plaintiff.*

FOSTER, LOONEY & WILKINSON,
CLEM RATCLIFF,
BLANCHARD, GOLDSTEIN & WALKER,
HAMPDEN STORY,
WILKINSON, LEWIS & WILKINSON,
BARNETTE & BLANCHARD,
THIGPEN & HEROLD,
S. M. COOK,
*Attorneys for all Defendants.*

J. L. PUGH,
*Atty. for Standard Oil Co. of La.*

*Bill of complaint.*

he District Court of the United States for the Western District of Louisiana, Shreveport Division.

UNITED STATES OF AMERICA, PLAINTIFF,
*vs.*
. LOUCKS, STAR OIL COMPANY, GULF RE- ing Company of Louisiana, defendants.
No. 1165—In equity.

*he Honorable Judge of the District Court of the United States r the Western District of Louisiana, sitting within and for the reveport Division:*

he United States of America, by its solicitor, Robert A. Hunter, ial assistant to the Attorney General, acting herein under the di- on and by the authority of the Attorney General of the United es, brings this bill of complaint against A. C. Loucks, a citizen e State of Kansas, and a resident of the city of Coffeyville, said e; K. W. Brown, Robert L. Stringfellow, and C. W. Brown, ens of the State of Louisiana, and residents of the city of Shreve- , in the Western District of said State, operating under the name e Star Oil Company; and the Gulf Refining Company of Lou-

isiana, a corporation organized under the laws of the State of Lou-
isiana, and domiciled and doing business in the city of New Orleans
in the Eastern District of said State, and thereupon complains and
shows unto your honor:

I.

That on and before December 15, 1908, the plaintiff was the owner
as a part of its public domain, of a certain tract of land, which was
then unsurveyed public land of the United States, but
6 which has since been surveyed under the direction and with
the approval of the Secretary of the Interior, and is now
known and described as lot number one (1) of section twenty-seven
(27), in township twenty (20), north of range sixteen (16) west
Louisiana meridian, Louisiana, situated in the parish of Caddo
Western District of Louisiana, as shown by a plat of survey ap-
proved March 28, 1917, by Clay Tallman, Commissioner of the Gen-
eral Land Office and ex-officio surveyor general for the State of Lou-
isiana.

That on and prior to the aforesaid date plaintiff was, and still is
the owner and entitled to the possession of the above-described land
and likewise of all oil, petroleum, gas, and other minerals therein
contained.

II.

On December 15, 1908, in order to conserve the public interests, and
in aid of such legislation as might thereafter be proposed, recom-
mended, and enacted, the President of the United States, by and
through the Secretary of the Interior, and under the legal authority
vested in him so to do, duly and regularly withdrew from settlement
and entry and from all other forms of appropriation all of the public
lands in townships 15 to 23 north, and ranges 10 to 16 west, Louisiana
meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President of the United States
acting by and through the Secretary of the Interior, by Executive
order, and under special authority conferred by the act of June 25,
1910, entitled "An act to authorize the President of the United States
to make withdrawals of public lands in certain cases," ratified and
confirmed and continued in full force and effect the previous
7 order of withdrawal of December 15, 1908, above set forth, in
so far as it affected the land described herein, including the
same as a part of petroleum reserve number four. That such lands
so withdrawn by said order of July 2, 1910, including the land herein
involved, were withdrawn from settlement, location, sale, or entry
and reserved for classification and in aid of legislation affecting the
use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated but
both are now in full force and effect, and said lands above named
including the property involved herein, ever since the date of the first
withdrawal, December 15, 1908, have not been subject to exploration
for oil, petroleum, gas, or other minerals, or to location or entry or

any kind under the general land laws, or mineral laws, of the United States.

III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith, entered upon and took possession of the tract particularly described in paragraph I hereof, for the purpose of drilling thereon for oil and gas, and did so drill one well known as Loucks No. 2, and did withdraw therefrom large quantities of oil and gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

IV.

That on and prior to the dates of the withdrawal orders
8 hereinabove set forth, to wit, December 15, 1908, and July 2, 1910, none of the said defendants, or any one from whom the defendants, or any of them, claim, was in the possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to withdraw said land from location, entry, and other appropriation.

V.

Plaintiff avers that no mineral location was in fact made by any of the defendants herein on the land upon which the said well is located, but, plaintiff is informed and believes, that the oil and gas withdrawn from said tract of land, as above set forth, were extracted therefrom under the color of a pretended claim of ownership in and to the said lands by the defendants herein. Plaintiff avers that said A. C. Loucks, Star Oil Company, and the Gulf Refining Company of Louisiana, defendants, have no right, title, or interest in and to the said tract of land, but acting under the said pretended claim of ownership, and subsequent to the withdrawal orders hereinabove referred to, entered upon the said tract of land, and the said Star Oil Company drilled a well thereon, as aforesaid, and has taken therefrom a large quantity of oil and gas, which it, the said Star Oil Company, has marketed and sold to the said Gulf Refining Company of Louisiana, defendant herein; that the said Star Oil Company received the price of the oil and gas so produced, marketed, and sold by it, and paid a royalty therefrom to the said A. C. Loucks, defendant, the amount of which is to the plaintiff unknown.

9 The exact quantity of oil and gas so produced, withdrawn from the land, marketed and sold, the value thereof, and the price and royalty paid to and received by the defendants herein, being unknown to the plaintiff, full discovery from the said defendants is sought.

VI.

Except as in this bill stated, the plaintiff has no other knowledge or information concerning the nature of any other claims asserted by the defendants herein, or any of them, and, therefore, leaves said defendants to set forth their respective claims and interests.

In that behalf the plaintiff alleges that none of the defendants herein has, or has had, any right, title, or interest in or to, or lien upon, the said land, or any part thereof, or any right, title, or interest in or to the petroleum, minerals, oil, or gas deposited therein, but, on the contrary, the acts of these defendants who have entered upon said land, drilled a well thereon, and converted the oil and gas deposited therein to their own use, as aforesaid, were all in violation of the laws of the United States and of the rights of plaintiff.

VII.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and unless restrained by order of this court will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

VIII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of three hundred ($300.00) dollars, and that all of the defendants herein acted in bad faith in the premises.

IX.

In consideration whereof and forasmuch as the plaintiff is without full, adequate, and complete remedy in the premises save in a court of equity, plaintiff prays—

1. That the said defendants be each required to make full, true, and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale, or other form of appropriation under the pubilc land or mineral laws of the United States.

3. That any and all deeds or instruments of writing of any kind or nature whatever under which defendants, or any of them, may claim the said land be decreed to be clouds upon plaintiff's title, and that same may be declared null and void, in so far as they may include, directly or indirectly, the property in controversy in this cause, and, to that extent that said deeds and other instruments of writing be canceled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and ear of all claims of the said defendants or any of them, and that e possession of said land may be restored to the plaintiff.

5. That a receiver may be appointed by this court to take possesion of said land and of all wells, improvements, and drilling parahernalia thereon, and any other property and instrumentalities on id land, used for the purpose of boring and extracting, storing nd transporting oil or gas, with full power and authority to conue operations on said land in the production and sale of oil, gas, nd other minerals, and to do and perform such acts as may be ecessary to protect the property of plaintiff against injury and aste and for the preservation thereof.

7. That an accounting may be had by each of said defendants herein each of them shall make a full, complete, itemized, and orrect disclosure of the quantity of oil and gas removed or exacted from said land, and of any and all moneys, or things of alue, derived from the sale and disposition of same, and all rents, oyalties, and proceeds arising from the sale or lease of same, and hat the plaintiff may recover from the said defendants, respectively, ll such sums so received by them, and all damages sustained by laintiff in the premises.

8. That plaintiff may have such other and further relief as may eem just to this honorable court and agreeable to equity and good onscience.

May it please the court that writs of subpœna issue directed to the Star Oil Company, K. W. Brown, Robert L. Stringfel-2 low, and C. W. Brown, defendants, commanding them and each of them at a certain time and under a certain penalty herein to be named, to appear before this honorable court and hen and there full, true, and direct answers make to all and singuar the premises, and to stand to perform and abide by such order, irection, and decree as may be made against it in the premises, and s shall be meet and agreeable to equity.

And may it further please the court that an order be granted and ntered, directed to the following defendants, not inhabitants of, r now within, this district, to wit, A. C. Loucks and the Gulf Refinng Company of Louisiana, and served as provided by law, directing aid defendants to appear and answer in this cause on a day certain o be designated by this court.

ROBERT A. HUNTER,
*Special Assistant to the Attorney General.*

*Affidavit.*

UNITED STATES OF AMERICA,
*Northern District of California.*

D. R. THOMPSON, being first duly sworn, deposes and says:

That he is a mineral inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging

to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and, particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location, and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the ex-
13 amination of such lands, and from examination of the records of the General Land Office and of the local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

Sworn to and subscribed before me this 28th day of July, 1917.
Deputy Northern.

C. W. CALHEATT,
*Clerk United States District Court*, ——— *District of California.*

*Order.*

The above and foregoing bill of complaint and affidavit being considered, and it appearing to the court that A. C. Loucks and the Gulf Refining Company of Louisiana are not inhabitants of the Western District of Louisiana, and are domiciled outside of said district,

It is, therefore, ordered that the said absent defendants be, and they are hereby, directed to appear and answer to the above and foregoing bill of complaint at Shreveport, in the Western District of Louisiana, on the 15 day of Sept., 1917, at the hour of ten o'clock a. m., and that the service of duly certified copies of the said bill of complaint and of this order be made on said defendants wherever found.

Thus done and signed this 2 day of Aug., 1917.

GEO. WHITFIELD JACK,
*United States Judge.*

Indorsed: Bill of complaint. Filed Aug. 2, 1917.

14 (*Motion to dismiss by Gulf Refining Co.*)

In the District Court of the United States for the Western District of Louisiana—Shreveport Division.

| | |
|---|---|
| UNITED STATES OF AMERICA, PLAINTIFF, *vs.* A. C. LOUCKS, STAR OIL COMPANY, GULF Refining Company, of Louisiana, Defendants. | No. 1165—In equity. |

Now comes the Gulf Refining Company of Louisiana, one of the defendants in the above cause, and moves the court to dismiss the bill filed in this case because said bill does not state any matter of equity entitling plaintiff to the relief prayed for, nor are the facts as stated sufficient to entitle plaintiff to any relief against this defendant.

Wherefore, defendant prays that this motion be sustained, the bill be dismissed as against this defendant, and that it be dismissed herefrom with costs.

THIGPEN & HEROLD,
*Solicitor for Defendant, Gulf Refining Company of Louisiana.*

Indorsed: Motion to dismiss on part of Gulf Refining Company of Louisiana. Filed Aug. 18, 1917.
B.

15 *Minutes showing overruling of motion to dismiss.*

Equity Journal, Vol. 1.

United States District Court, Western District of Louisiana.

THURSDAY, SHREVEPORT, LA, *February 28, 1918.*

Court met pursuant to adjournment and was ordered opened.

Present and presiding: Hon. Rufus E. Foster, U. S. judge.

UNITED STATES OF AMERICA,
*vs.*
A. C. LOUCKS ET AL. } No. 1165—In equity.

This cause came on to be heard this day according to previous assignment, upon the motion to dismiss heretofore filed herein by defendants, Mr. Robert A. Hunter, special assistant to the Attorney General, appearing as solicitor for complainant, and Mr. S. L. Herold, appearing as solicitor for defendants. The said motion to dismiss was argued, submitted and overruled by the court.

16 *Answer Star Oil Co. and K. W. and C. W. Brown to bill complaint.*

In the District Court of the United States for the Western District of Louisiana—Shreveport Division.

UNITED STATES OF AMERICA, PLAINTIFF,
*vs.*
A. C. LOUCKS, STAR OIL COMPANY, GULF Refining Company of Louisiana, defendants. } No. 1165— In equity.

The joint answer of of the Star Oil Company and of K. W. Brown and C. W. Brown, citizens of the State of Louisiana, to the bill of of complaint herein filed by the United States.

In this matter now comes the Star Oil Company and K. W. Brown and C. W. Brown, citizens of the State of Louisiana, and for answer to the bill of complaint herein say:

1. They deny this allegation, and on the contrary aver that there is no legal survey describing said land as lot number one of section twenty-seven, township twenty, range sixteen, but on the contrary charge that said property so claimed by the said complainant is properly described on the plat of the United States survey made by the United States as the northeast fractional quarter of section twenty-seven, township twenty, range sixteen, and as such was patented by the United States to Matthew G. Jackson, on the 1st day of June, 1860, and that your defendants held by mesne conveyance under and through said Jackson the said described
17 property as will appear from the patent issued by the United States to said property, which will be produced on the trial hereof.

Your defendants therefore deny that the complainant is the owner or entitled to the possession of the land described or that it has any interest in the oil or minerals obtained therefrom.

2. Your defendants aver that the matters and things here alleged the utterly immaterial to any issue in this case and should be stricken from said bill of complaint for said reason. But if this motion to strike same from said bill of complaint is overruled and your defendants are required to answer the same, then they admit that the President of the United States issued the orders named, but they deny that the property herein involved was affected in any manner by such order of the President, for the reason that it at that time did not belong to the United States and it had no control over the same and could not affect it in any way.

3. Your defendants show that the matters and things here alleged are utterly immaterial to any issue in this case; but if required to answer same they show that they did have a valid title to said property and have lawful right to enter upon and take possession of the same and did have a right to drill thereon for oil or gas, and exercising such right they did drill one well thereon, known as
"Louck's No. 2," but did not withdraw therefrom a large quan-
18 tity of oil and gas, as will hereinafter be set forth. And they show that the said A. C. Loucks has no interest in said land from the oil produced therefrom, all of his right, title, and interest having been purchased by your defendants, K. W. and C. W. Brown, as will appear by a deed from him covering said property, which will be produced on the trial hereof.

4. The matters and things here alleged are utterly immaterial to any issue in this case. But if forced to answer same they admit that they did not claim it under the mining laws of the United States, but aver that they claimed said property under the purchase thereof from the said A. C. Loucks, who held it from the original patentee from the United States, as heretofore alleged.

5. Your defendants show that the matters and things herein alged are utterly immaterial and irrelevant to any issue in this case. ut if they are forced to answer the same they show that they have ade no mineral location on said property but drilled on the same as e owners thereof as heretofore set forth. And they aver that they ted in good faith in going on said property under said claim of wnership, but they deny that they took therefrom a large quantity f oil or gas and aver that they only received in oil from said tract f land four hundred and forty-one and 14/100 barrels, for which ey received four hundred and thirty-two dollars and 31/100 $432.31) dollars, and that the cost of drilling said well and proucting the said oil amounted to the sum of eight thousand four hundred and thirty-nine and 37/100 ($8,439.37) dollars, as will fully appear on the trial hereof; and even if it should be decreed they are not the owners of said land, they then ow that the United States was without right or title to said oil ntil it was produced and brought to the surface, and that the said nited States must pay the cost of producing the same before it as any right or claim thereto. In any event, if it be held that e said United States is the owner of said land and entitled to e oil produced therefrom, then and in such event they have a right offset the claim of the said United States for said oil by the said st of producing it, and inasmuch as the cost of producing said oil r exceeds the value of the oil produced, that the United States is titled to nothing in any event by this demand.

6. They deny the allegation herein made and on the contrary aver at they are the owners of said property and have the right to the inerals produced therefrom and they deny that they were in viotion of any of the laws of the United States or in violation of any f the rights of the said plaintiff.

7. They deny this allegation, and on the contrary aver that they ve long since disposed of all of their right, title, and interest in nd to said property, and the same is now owned and claimed by the addo Oil Refining Company, Incorporated, of Louisiana, and havg sold said property they have no intention of drilling thereon.

8. They admit that the value of the oil and land in controversy exceeds the sum of three hundred dollars but deny that they have acted in bad faith in the premises, and on the conrary aver that they believed that they were owners of the property nd had a right to drill thereon, and they still aver that they were e owners of the said property at said time and that the plaintiff ad absolutely no interest therein.

9. They deny the allegation here made and aver that the plaintiff as a full and adequate remedy at law.

Wherefore, they pray that the plaintiff's demands be rejected at its st and for general relief.

ALEXANDER & WILKINSON,
*Attorneys for Defendants.*

Indorsed: Answer Star Oil Co. and K. W. and C. W. Brown. Filed Aug. 23, 1917.

*Plaintiff's reply to set-off and counterclaim, Star Oil Co. et al.*

In the District Court of the United States for the Western District of Louisiana—Shreveport Division.

UNITED STATES OF AMERICA, PLAINTIFF,
*vs.*
A. C. LOUCKS, STAR OIL COMPANY, GULF REFINING COMPANY OF LOUISIANA, defendants.
No. 1165—In equity.

1. Now into this honorable court comes the United States of
21 America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its solicitor, Robert A. Hunter, special assistant to the Attorney General, and for reply to the set-off and counterclaim asserted by defendants, Star Oil Company, K. W. Brown and C. W. Brown in their answer filed in the above numbered and entitled cause, shows:

2. That plaintiff renews and reaffirms the allegations and prayer of the original bill of complaint filed herein.

3. Plaintiff denies all the allegations of the said answer relating to said set-off and counterclaim, and particularly paragraph 5 of said answer wherein said counterclaim as set-off are asserted by defendants.

4. Plaintiff shows that the said defendants are not entitled to any set-off or counterclaim whatsoever in the premises.

5. Further replying, plaintiff avers that the said defendants entered upon the land described in the bill of complaint, and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendants were wilful and knowing trespassers upon said land.

6. Plaintiff further shows, in the alternative, that even if
22 the said defendants are entitled to a set-off, or counterclaim, in any amount, which is denied, the sum claimed by the defendants is excessive and should not be allowed.

7. Wherefore, plaintiff prays that the set-off and counterclaim asserted by the defendants be denied and disallowed, and that plaintiff have relief in the premises as prayed for in the bill of complaint.

ROBERT A. HUNTER,
*Special Assistant to the Attorney General.*

Indorsed: Plaintiff's reply to defendant's (Star Oil Company, K. W. Brown and C. W. Brown) set-off and counterclaim. Filed Aug. 28, 1917.

*Answer of A. C. Loucks to bill of complaint.*

District Court of U. S., Western District of Louisiana.

UNITED STATES OF AMERICA,
*vs.*
A. C. LOUCKS ET AL. } No. 1165—In equity.

In this case now comes A. C. Loucks, made defendant herein, and for answer to the demands and bill of complaint of the United States adopts as his answer all of the allegations made in the answer of his codefendants, K. W. Brown and C. W. Brown, and makes the answer of his said codefendants his own.

3 Wherefore, he prays that he demands of the plaintiff be rejected at its cost, and for general relief.

ALEXANDER & WILKINSON,
*Attorneys for Defendants.*

Indorsed: Answer of A. C. Loucks. Filed Sep. 19, 1917.

*Interrogatories propounded by plaintiff to Star Oil Co. and Gulf Refining Company of Louisiana.*

(1) State who drilled the well known as Loucks No. 2 on the land in controversy.

(2) State when the said well was commenced, when it was completed, and how long and by whom same was operated.

(3) Did said well produce oil, and was said oil or the proceeds of the sale thereof converted to the use and benefit of the defendant in this cause?

(4) During what period was said well operated in the production of oil, and when, if at all, did it cease to produce oil?

4 (5) State the total production of oil from the said well (a) up to July 31, 1917, and (b) from July 31, 1917, to January 1, 1918.

(6) State whether or not the said well was operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(7) Was a separate and complete record kept by the Star Oil Company and the Gulf Refining Company of Louisiana of the oil produced by said well? If so, state how, and in what manner said record was kept.

(8) If the production as given by you in your answer to the bill of complaint and in your answers to the preceding interrogatories is based upon an estimate of the quantity of oil produced by well in suit, in connection with other wells not in suit, or if you have stated that said production is estimative and not exact, then state (a) the total production of all wells operated in conjunction with the wells in suit, naming and giving the location of such other

wells, and (b) the manner in which you arrived at, or figured the production of the well in suit.

(9) State the total market value of the oil produced by the
25 Star Oil Company and sold to the Gulf Refining Company of Louisiana from the land in controversy, and say whether or not the value as given by you in your answer is exact or approximate, and, furthermore, state upon what the value as given is based.

(10) State whether or not the Gulf Refining Company of Louisiana is engaged, and was engaged at the time said oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

(11) State to what person or company the production of the well in suit was sold during the time that same was operated.

(12) State the quantity and value of the oil extracted from the land in controversy which was sold by the producers thereof to the purchaser or purchasers thereof.

(13) What was the total price received by the Star Oil Company for all the oil produced by the well in controversy?

(14) What was the quantity and value of the oil taken away and removed from the property in controversy by the Gulf Refining Company of Louisiana?

26 (15) Is it not a fact that an agent, representative, or employee of the Gulf Refining Company of Louisiana went upon the land in controversy at the time of any pipe-line run, or runs, for the purpose of gauging the quantity of oil transferred from the tank, and did not said gauger measure, or ascertain, the amount of oil run from said tank, or tanks, to said pipe line? If the amount of oil purchased by the Gulf Refining Company of Louisiana from the Star Oil Company out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so purchased was measured or ascertained.

(16) What are the principal products manufactured from petroleum, or crude oil?

(17) State the total value, either exactly if you know, or approximately, if you do not know exactly, of the products manufactured by the Gulf Refining Company of Louisiana from the oil extracted from the land in controversy.

(18) State the total profits made by you (a) from the sale of any or all of the crude oil extracted from the land in controversy, and (b) the profits made by you from the manufacture and sale of the products of said crude oil.

(19) If in the answer to the foregoing interrogatories it is
27 stated the Gulf Refining Company of Louisiana did not manufacture any or all of the oil taken from the land in controversy, but that it sold the same, then state (a) to whom said oil or any part thereof was sold, (b) what profit the Gulf Refining Com-

pany of Louisiana made on the sale thereof, (c) how delivery was made to the purchaser, (d) what relation, if any, existed between the Gulf Refining Company of Louisiana and the purchaser of said oil, with particular reference to whether the purchasing company and the Gulf Refining Company of Louisiana are, or not, composed of the same stockholders, or managed by the same directors or officers, and (e) to what extent, if any, the Gulf Refining Company of Louisiana, or its stockholders participated in the profits made by the purchasing company out of said oil.

(20) How much money was paid by you as royalty to the other defendants herein out of the proceeds of the sale of oil taken from the land in controversy? State the names of the persons to whom such royalty was paid and the amount paid to each.

ROBERT A. HUNTER,
*Special Assistant to the Attorney General.*

Note.—All of the above interrogatories except those numbered 16, 17, 18, and 19 are to be answered by the Star Oil Company and K. W. Brown and C. W. Brown.

Interrogatories numbered 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19 and 20 are to be answered by the Gulf Refining Company of Louisiana.

Indorsed: Application and order to file interrogatories and interrogatories addressed to Star Oil Company, K. W. Brown, C. W. Brown, and The Gulf Refining Company of Louisiana. Filed Feb. 20, 1918.

28 *Answer Star Oil Co. to interrogatories.*

UNITED STATES OF AMERICA, COMPLAINANT,
*vs.*
A. C. LOUCKS, ET AL., DEFENDANT. } No. 1165—In equity.

In this matter now comes the Star Oil Company, and for answer to the interrogatories to it propounded in the above matter, says:

To inty. No. 1 it answers: The Star Oil Company.

To inty. No. 2 it answers: The said well was commenced on Nov. 14th, 1912, and completed on January 31st, 1913. Operated by the Star Oil Company for about three months.

To inty. No. 3 it answers: Said well produced oil, and the proceeds from sale of same were converted to the use and benefit of the defendants in this case.

To inty. No. 4 it answers: The well was operated in the months of February, March and April, 1913, and ceased to produce oil the latter part of April, for the reason that it was abandoned at that time on account of being operated at a loss.

29 To inty. No. 5 it answers: The total production of said well to July 31, 1917, amounted to 504.16 barrels, and no oil was produced from that date.

To inty. No. 6 it answers: Said well was operated as an entity.

To inty. No. 7 it answers: A separate and complete record was kept of oil produced by this well. Record was kept in a special book for oil production, and every time a tank or portion of a tank of oil was run a separate entry was made.

To inty. No. 8 it answers: Production as given is exactly the amount produced and was figured from tank gauge tables made for that purpose, and said well was never operated in connection with any other wells.

To inty. No. 9 it answers: The total market value of oil sold the Gulf Refining Company of Louisiana was four hundred ninety-four and 07/100 dollars, and this is the exact amount (the Star Oil Company received four hundred thirty-two and 31/100 dollars, and A. C. Loucks received sixty-one and 76/100 dollars). The value given is based upon the market price of oil on the day said oil was sold.

To inty. No. 10 it answers: The Gulf Refining Company of La. is said to be in the business of manufacture and sale of oil; also
30 in the production of oil. Do not know what disposition the Gulf Refining Company made of the oil sold to them from said well.

To inty. No. 11 it answers: All oil produced by this well was sold to the Gulf Refining Company of Louisiana.

To inty. No. 12 it answers: Said well produced 504.16 barrels of oil, valued at four hundred ninety-four and 07/100 dollars.

To inty. No. 13 it answers: The total price received by the Star Oil Company from the well in controversy was four hundred thirty-two and 31/100 dollars.

To inty. No. 14 it answers: The quantity of oil taken away and removed from the property in controversy by the Gulf Refining Company of Louisiana was 504.16 barrels, and the value was four hundred ninety-four and 07/100 dollars.

To inty. No. 15 it answers: It is a fact that an employee or representative of the Gulf Refining Company of Louisiana went upon the land in controversy at any time, and pipe-line run or runs were made for the purpose of gauging the quantity of oil transferred from tanks, and said gauger did measure and ascertain the amount of oil run from said tank or tanks to said pipe line. The amount of
31 oil purchased by the Gulf Refining Company of La. out of the production of the land in controversy was ascertained by a gauger, in the manner above indicated. The quantity of oil so purchased was ascertained by measurement of amount of oil in tank or tanks in feet and inches, and from the number of feet and inches of oil run from the tank or tanks; the number of barrels was calculated from gauge tables made for each tank for that purpose.

To inty. No. 20 it answers: The royalty was not paid by the Star Oil Company, but was paid by the Gulf Refining Company of Louisiana (which is the manner in which royalties are usually paid) to A. C. Loucks, and the amount was sixty-one and 76/100 dollars.

K. W. BROWN.

Sworn to and subscribed before me on this the 2nd day of March, 1918.

JNO. D. WILKINSON,
*Notary Public.*

[SEAL.]

Indorsed: Answer to interrogatories. Filed March 4, 1918.

*Answer Gulf Refining Co. to interrogatories.*

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES OF AMERICA, COMPLAINANT,
*vs.*
A. C. LOUCKS ET AL., DEFENDANTS. } No. 1165—In equity.

In the above numbered and entitled cause now comes the Gulf Refining Company of Louisiana, through C. R. Minor, its third vice president, a proper officer of the said corporation for the answering of interrogatories to it herein, and answers said interrogatories, under oath, as follows, to wit:

To interrogatory No. 5 defendant answers: This defendant has no record or information as to the production from the said well.

To interrogatory No. 6 defendant answers: This defendant has no record or information as to the operation of the said well, except that during the time it purchased oil from the said well the said well was operated by itself.

To interrogatory No. 7 defendant answers: Yes; the records were kept by the Gulf Refining Company of Louisiana of the pipe-line runs from the said well into the pipe line of the Gulf Refining Company of Louisiana.

To interrogatory No. 8 defendant answers: This defendant has no record or information as to the production from the said well.

To interrogatory No. 9 defendant answers: The total number of barrels of oil sold to the Gulf Refining Company of Louisiana from said well was 504.17 barrels, of the value of $494.08. The value given is exact and is based on posted pipe-line prices at the date of the purchase of the oil, same being the prevailing market price of oil in the field at such date.

To interrogatory No. 10 defendant answers: The Gulf Pipe Company of Louisiana is not now nor was it at the time of the purchase of the said oil engaged in the manufacture of any products of oil.

To interrogatory No. 11 defendant answers: The oil purchased t this defendant from the production from the said well was sold t this defendant to the Gulf Pipe Line Company, a Texas corporatio

To interrogatory No. 12 defendant answers: Not having inform tion with respect to the same, this defendant can not answer this i terrogatory except to report that it purchased 504.17 barrels of sai oil for $494.08, the then market price thereof.

To interrogatory No. 14 defendant answers: The amount of o taken away and removed from the property in controversy by th Gulf Refining Company of Louisiana was 504.17 barrels, of the valu of $494.08.

34 To interrogatory No. 15 defendant answers: Yes.

To interrogatory No. 16 defendant answers: Gasoline, kero sene, and lubricating oils.

To interrogatory No. 17 defendant answers: The Gulf Refining Company of Louisiana never manufactured any products from an oil extracted from the land in controversy.

To interrogatory No. 18 defendant answers: (a) The Gulf Re fining Company of Louisiana made no profits from the sale of an of the crude oil extracted from the land in controversy; it purchased 504.17 barrels of said oil for its value, $494.08, and sold the same to the Gulf Pipe Line Company at the same price, plus a reasonable pipage charge of 10 cents per barrel, or $50.42, which represented the cost of transporting said oil plus reasonable depreciation and obsolescence charges on the pipe line through which it conveyed the oil for delivery to the Gulf Pipe Line Company.

(b) The Gulf Refining Company of Louisiana not having manu factured any products from said crude oil, never made any profits thereby.

To interrogatory No. 19 defendant answers: The oil purchased by the Gulf Refining Company of Louisiana out of the oil produced from said land was sold—

35 (a) To the Gulf Pipe Line Company.

(b) At no profit unless the Gulf Refining Company of Louisiana made some profit out of the said pipage charge of ten cents per barrel.

(c) By delivery into the lines of the Gulf Pipe Line Company at its receiving station in the State of Texas.

(d) The Gulf Pipe Line Company and the Gulf Refining Com pany of Louisiana are not managed by the same directors and of ficers, nor are they composed of identically the same stockholders; but the Gulf Oil Corporation, a corporation under the laws of the State of New Jersey, is the principal stockholder in both corpora tions.

(e) If the Gulf Pipe Line Company made any profits out of said oil, as to which this defendant has no knowledge, the Gulf Refining Company of Louisiana, not being a stockholder in the Gulf Pipe Line Company, participated in none of such profits.

If the Gulf Pipe Line Company made a profit out of said oil, as to which this defendant has no knowledge, such stockholders of this defendant as were stockholders in the Gulf Pipe Line Company were benefited thereby.

To interrogatory No. 20 defendant answers: The Gulf Refining Company of Louisiana paid nothing as royalty out of said oil; it purchased the said oil from K. W. Brown and A. C. Loucks, in the proportions of $\frac{7}{8}$ from the said Brown and $\frac{1}{8}$ from the said Loucks, and settled for same in the same proportions.

C. R. MINOR.

36 Sworn to and subscribed before me, on this the 15th day of March, 1918.

[SEAL.] J. A. THIGPEN,
*Notary Public in and for Caddo Parish, Louisiana.*

Indorsed: Answer of the Gulf Refining Company of Louisiana to interrogatories. Filed Apr. 20, 1918.

*Motion to take bill pro confesso as to defendant, R. L. Stringfellow.*

Now into this honorable court comes Robert A. Hunter, special assistant to the Attorney General, and with respect represents:

That service of subpœna in chancery was made on defendant R. L. Stringfellow, August 13, 1917. Plaintiff shows that the said defendant has filed no answer or other appearance herein.

Plaintiff, therefore, moves that the bill of complaint in this cause be taken pro confesso against the said defendant.

ROBERT A. HUNTER,
*Special Assistant to the Attorney General.*

Filed Feb. 25, 1918.

37 *Order of pro confesso.*

As entered on equity journal of said court.

Upon motion of Robert A. Hunter, Esq., special assistant to the Attorney General,

It is ordered that this cause be set for Thursday, February 28, 1918, for hearing on the motion to dismiss heretofore filed herein by the Gulf Refining Company of Louisiana.

In this cause also comes Mr. Robert A. Hunter, special assistant to the Attorney General and solicitor for complainant, and files a motion to take the bill of complainant herein as confessed as to R. L. Stringfellow, one of the defendants herein; and it appearing from the record that subpœna in chancery was duly served upon said defendant, R. L. Stringfellow, on August 13, 1917, and that no appearance, plea, or answer has been filed by said defendant;

It is ordered that a decree pro confesso be and the same is hereby entered as against said defendant, R. L. Stringfellow.

*Order appointing special master.*

United States District Court, Western District of Louisiana.

UNITED STATES
*vs.*
A. C. LOUCKS ET AL. } No. 1165.

This case now being at issue, the court considering that the services of a master are necessary to aid the court and economize its
38 time, and for the purpose of expediting the final hearing of said cause, the court of its own motion appoints Edward H. Randolph, Esq., special master herein.

It is further ordered that this case be referred to said master to take the evidence and report his findings of fact and conclusions of law thereon.

The said special master is authorized to set the case for hearing at such time and place as in his opinion may be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the court or elsewhere as may be advisable.

RUFUS E. FOSTER, *Judge.*

March 29, 1918.
Filed Mar. 29, 1918.

*Report of special master.*

In United States District Court, Western District of Louisiana.

Nos. 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1162, 1163, 1164, 1165, 1167, 1168, 1170, 1171, 1172.

To the Honorable RUFUS E. FOSTER,
*Judge, U. S. District Court, Western District of Louisiana:*

*May it please your honor:*

Having been appointed by your honor master in chancery in the above cases to take the evidence and report findings and conclusions of law thereon, and after having heard the testimony and arguments of counsel, I beg to make this my report. In consider-
39 ing the two cases I have found they naturally group themselves into two classes, which I have designated as class "A" and class "B."

Class A includes the following cases:

United States vs. C. W. Lane et al., No. 1153.

United States vs. Chas. J. Green, Jr., et al., No. 1155.

United States vs. Jeems Bayou Hunting & Fishing Club et al., No. 1157.

United States vs. Gulf Refining Company of Louisiana, No. 1158.

United States vs. W. H. Enders et al., No. 1160.

United States vs. Southwestern Gas & Electric Company et al., No. 1162.

United States vs. J. M. Walling et al., No. 1163.
United States vs. Mrs. Jessie M. La Robadierre et al., No. 1164.
United States vs. A. C. Loucks et al., No. 1165.
Class B includes the following cases:
United States vs. W. W. Green et al., No. 1154.
United States vs. Henry Hunsicker et al., No. 1156.
United States vs. Arkansas Natural Gas Co. et al., No. 1159.
United States vs. R. B. Norvell et al., No. 1167.
United States vs. W. H. Mathews et al., No. 1168.
United States vs. Dillard P. Eubank et al., No. 1170.
United States vs. Mrs. Lydia H. McMullen et al., No. 1171.
United States vs. Sam Mason et al., No. 1172.

In class A the defendants deny the title of the United States. In class B they admit the title to the lands in dispute are still in the United States, but set up that they in due course according to law made mineral locations thereon of which they can't be divested.

First in consideration I take up class A suits of which the case of ited States vs. Jeems Bayou Hunting & Fishing Club et al., No. 57, is most typical of the contentions raised by the United States d the defendant in class A suits. Concisely stated in the class A ts the contention of the United States is that the ownership of lands in dispute has never at any time passed from it; that in int of fact they were in the category of unsurveyed public lands til December, 1916, and that since that survey no alienation has n made by the Government and that defendants are without any niment of title.

On the contrary, the defendants deny that the lands were in the gory of unsurveyed lands prior to March 1917 and aver that or to that date, to wit, 1839, their lands were surveyed by A. M. rren, deputy United States surveyor, mapped and filed in the deral land office, the land sold and United States patent issued refor, and that the defendants have good title derived by mesne veyances from the the original patentees. In the survey of 1839 township 20, the Government claims that the surveyor left out the survey 987.77 acres, 248.87 acres of which is involved herein d to which the Government claims defendant has no title. The ve are the outstanding contentions. There lands are all border ds lying on Ferry Lake and are all in township 20, range 16 west, uisiana meridian, and lie in the following sections of said town-p, to-wit: Three, four, five, eight, nine, ten, twelve, thriteen, een, sixteen, twenty-three, twenty-four, twenty-five, twenty-seven, and thirty-two.

In addition to the above general statements of the issues made by defendant there are in the pleadings such issues as ial of the right to make a resurvey of township 20 on the ground t the order therefor directs the survey from range 10 to range 11, ch is not inclusive of range 16; also that lands in controversy e in character swamps and passed to the State; and that the

alleged unsurveyed lands in this township lying on the lake were formed by relictions and passed to the defendant holders as riparian proprietors.

Altho such contentions were set up by defendants pleadings, they were as the trial progressed, in a number of the cases, practically abandoned and the controversy settled down on the pivot of whether the lands in controversy, at the time in 1839 when a survey of this township was made by the Government, were in point of fact included; or if not in point of fact included in the 1839 survey, yet the Government should be held, as respects defendants and their authors in title, in law as virtually having thru its owns surveyor and his maps held out that all lands in question at that date were included, and therefore should not be permitted at this date to revise its representation thru its surveyor and maps to the prejudice of defendant, even tho the lands in controversy were in place and not included in map. This would reduce the controversy to a question of law. To make this clear I will take up the cases seriatim, and first the case No. 1157 of United States vs. Jeems Bayou Hunting & Fishing Club et al. as being the most illustrative of the contentions.

42 UNITED STATES
*vs.*
JEEMS BAYOU HUNTING AND FISHING CLUB ET AL. } No. 1157.

This case involves lots 8, 9, and 10, aggregating 85.22 acres of section 10, twp. 20 N., R. 16 west, and is shown on plat No. 11 of plaintiff's offering, colored red. This plat is called a supplemental plat of twp. 20 N., range 16 west, made by A. D. Kidder and associates, United States surveyor in 1916, and approved Marcy [March] 28, 1917. This same plat illustrates the Government contention that the original survey of this township 20 by Warren, Government surveyor, in 1839 (Warren's map being plaintiff's offer 3, filed in evidence) omitted 565.98 acres of land which were in place at the time and omitted by Warren and therefore, as the Government contends, remained legally as unsurveyed Government land even after Warren made his map (p. 3) and returned it with his field notes to the surveyor general's office. The omitted areas are shown on plat 11 and appear all around the border of Ferry Lake, but the greatest area omitted by Warren in the original survey lies in sec. 10. As stated already, the orginal survey and maps of this land by the Government was by Warren in 1839 and a replica of this map is in evidence (p. 3). This survey shows the area in the southwest fractional quarter, sec. 10, as containing 55.88 acres and represents section 9 lying west of section 10 as being no land at all. As a matter of fact, subsequent surveys made by Bristol in 1871 and by Kidder in 1916 confirmed the fact that at the time of Warren's survey the part of sec. 10 represented on his map as rather a long and narrow peninsular and as containing 55.88 acres actually contained 129.60 acres additional, and that Warren's map showing section 9

43 lying west of section 10 as water, actually had at that time 66.29 acres, entirely omitted from Warren's survey and 28.33 acres in section 16 which Warren's survey and map ignores altogether.

This brings me to the consideration of the fact claimed by the Government, to wit: Were the lands in section 10, aggregating 129.60 acres; in section 9, aggregating 66.29; and in section 16, aggregating 28.33 acres, actually in esse as high lands at the time of Warren's survey? To determine this matter the United States Government ordered a resurvey in 1913 and 1914 and an extension survey in 1916 and 1917 of the lands in township 20, range 16 west. This work was done under their instructions by Arthur D. Kidder, supervisor of surveys. The resurvey was made in 1913 and 1914 and the extension survey in 1916 and 1917. In the course of this survey Mr. Kidder and his associates reestablished and reproduced the survey made by Warren in township 20 N., R. 16 west, and made the official plats and maps herein filed (all approved by the department of the Government Land Office). On the trial before me, it is specially admitted in suits herein Nos. 1153, 1158, 1162, 1163, and 1164 that these surveys, maps, and plats by Kidder were executed according to the instructions of the Government Land Office and that such plats correctly reestablished and reproduced the survey made by Warren in township 20 N., R. 16 west, in strict accordance with the original survey.

Altho in this suit there is no admission in the record to the same effect, yet in the arguments, oral and in brief, there is no attack on the accuracy of the map of Kidder. Much interesting testimony was adduced by the Government to prove its contention that the lands in these suits were in actual place as high lands when 44 Warren made his survey but were ignored by Warren in making his survey and treated as nonexistant by him and also to prove that in the section to the west and south where Warren's map and field notes represent that the shore of Ferry Lake lay there was in point of fact high lands with the actual shore line distant 2,700 and 2,500 feet at furthest and 725 to 990 feet nearest.

This testimony was furnished not only by Kidder and his associates who actually did the work, but also by three distinguished scientists, one a geologist, Prof. Frank Leverett, of the University of Michigan, and two geologists, Prof. Lionel J. James, of the Department of Agriculture of the United States, and Dr. Henry C. Contes, professor of plant ecology in the University of Chicago.

One of the first things to determine in reproducing the Warren survey and to show the exact status of the land and water at that period and the period of 1812, when Louisiana came into the Union, was to determine the mean high-water mark of the Ferry Lake at that period or the contour line, as it is called, of the lake.

This was done by a study of the wave action on the border of the lake by the geologist, which consisted of shore marks and also of a study of the soil in the bed of the lake and on the upland borders;

also by a study of the tree growth on the shore and the lake and the various timber belts on the shore consisting of cypress; above this, overcup oaks and other trees which would not grow upon lands permanently covered by water. In this recognizance work they directed stakes to be set at the margin between the cypress timber and overcup oaks. It is established by Kidder's testimony that the high-water elevation of Ferry Lake in 1839 (the date of Warren's survey) and in 1812, when Louisiana was admitted into the Union, was
173.09 feet above Gulf level. Certain birthmarks as to the
45 high-water elevation of Ferry Lake with reference to the Gulf level (or sea level) have been established by Army Engineers on Red River and in this township 20 dating back as far as
and these were identified and used by Kidder in locating the 173.09 contour of the lake and the contour actually made by the surveyors around the entire border of Ferry Lake. When this contour was made it was found to practically coincide with 173.09 acres high-water level already independently located and staked by the geologist and ecologists. It was also found that Warren's survey was actually made by him with reference to this same level and contour. In returning the lines of Warren's survey following Warren's field notes and directions, Kidder found that in the termination of all the section lines to the lake shore Warren had stopped at the 173.09 level, and also that in retracing many of Warren's meander lines on the border of the lake he (Warren) had run them either exactly or approximately on the 173.09 contour (which had already been located and worked out by Kidder and the scientists as the shore before the above verification by Warren's own date). The 173.09 contour is confirmed by the Louisiana-Texas Boundary Commission in 1841; also by Moore's survey in 1846 and Boyd's survey of 1854, dealing with certain other lands on Ferry Lake.

A more detailed reference to the evidence and discussion thereof on this point might be made, but the fact that Warren recognized the 173.09 elevation as existing at the time of his survey is expressly made in the suits herein, Nos. 1153, 1158, 1162, 1163, and 1164, and is not seriously denied, since all evidence is in, by the other defendant litigants. The admission on this matter finally made in the
above suits is as follows:

46 "2. That the contour line of 173.09 feet above Gulf level established by the said Arthur D. Kidder, supervisor of surveys, as the mean high-water elevation of Ferry Lake in 1812, when Louisiana was admitted into the Union, and in 1839, when A. W. Warren made his survey of township 20 north of range 16 west, was in reality the mean high-water elevation of Ferry Lake and James Bayou, at such dates, and that the meander line of Ferry Lake and James Bayou, as run by said Kidder, follows said contour of 173.09 feet.

"3. That all of the tracts in controversy in these suits lie above the mean high-water elevation of Ferry Lake as it existed in 1812 and 1839.

"4. That the various tracts of land lying between the meander
ne of Ferry Lake and James Bayou as run by the said Arthur
. Kidder, and the line represented as a meander line upon the plat
said original Warren's survey, hereinabove referred to, includ-
g the tracts in controversy in these consolidated causes, were in
12 and 1839, at all times since said date, and now are, lands in
lace and of the same character, geological formation, and quality,
the lands surveyed by said Warren, as aforesaid, that said tracts
f land are now and were in 1812 and 1839, and at all times since
id dates, what is known in this locality as hill land, covered with
ative forest trees and vegetation characteristic of hill land, and that
ll of said lands were at the dates mentioned and at all times subse-
uent thereto uplands in character and existed as such at the time
f the said Warren's survey and in 1812.

"5. That the various tracts of land embraced in the exten-
sion survey of the said Arthur D. Kidder, spervisor of sur-
veys, and represented upon the plats aforesaid, including
he property in controversy in these consolidated causes, were not
ormed by accretion, or by the recession or reliction of the waters
f Ferry Lake or James Bayou since 1812." (See stipulation of
ounsel in cases mentioned, pages 2 and 3.)

On their basis of 173.09, Kidder and his associates were able by
aking Warren's field notes, to track him over the exact terrain
hich he walked in 1839 and found beyond a doubt in this section
hat when Warren reached nearly the point of the land shown on
is map as a narrow peninsula in the southwest quarter of section
0, in township 20 north, range 16 west, he carelessly left the shore
ine of the lake, running a short distance to the west on a line
hrough highlands well timbered, leaving the lake shore 725 feet
outh of him and then turning approximately north, ran his line
hrough high lands without reference to the actual shore line of
he lake, which in point of fact was at that time at least 2,770 feet
o the west of his survey. By so doing he ignored the presence of
he land in question in this suit, which at that time was in place
nd most of it seven feet higher than the land actually surveyed
by him, and made a map showing 55.88 acres as containing all the
land in the alleged southwest fractional quarter of section 10.
This is well illustrated by map 31 of plaintiff in evidence. The
land so omitted was topographically surveyed, its elevations taken
by Kidder and associates, and map of it shows it to have been even
above the 180-foot contour (which was the high-water stage at
that period of Red River and Ferry Lake) and none of it below
the 173.09 level on which Warren based his survey.

It is also, by the scientists already mentioned, proven that
48 this land so left out by Warren was at the time of his survey
well timbered high land with the growth on it of pine, oak,
and red gum, etc. It is proven by the scientists that this same
sort of growth was in this land as far back as 1800. From a com-
parison of Warren's map, plaintiff 3, in evidence, with Kidder's

survey as shown by map 31, plaintiff's evidence, page 9, it is apparent that the little peninsula mentioned by Warren as the fractional southwest quarter of section ten does not represent either the area or shape of the land, certainly in place at the time of his survey—nor does it even approximate the real area and shape. It is impossible to accept his southern or western line as a real meander of the shore. It will be seen from map 31 of plaintiff's evidence that the lots involved in this suit are far from the total area omitted by Warren in his survey of the western fractional one-half of section ten. The area of the land is 85.22 acres; the other lands omitted by Warren from his survey in this point approximate 118.46 acres plus a body of land lying north of the above land aggregating 280.87 acres surveyed by Bristol in 1871, all of which Warren's map returns as lake.

I find therefore as a fact that this land in question was and is not alluvial nor swamp nor overflowed nor formed by retection, recession or accretion, but it was highlands in place in 1812 and 1839.

I find also as a fact that the land in question was not surveyed by Warren in 1839 and should be classed in the category of unsurveyed public lands of the United States prior to the survey made by Kidder unless the defense set up by defendant shows a divestiture of the ownership of the Government since the Warren survey.

The defendant, the Producers Oil Company, claim under a lease from the Jeems Bayou Hunting & Fishing Club, in 1910,
49 and put down the oil wells on this land (the Texas Company bought the oil produced therefrom from the Producers Oil Co.). The Producers Oil Company therefore is bound to defend the title of the Jeems Bayou Hunting & Fishing Club. A consideration of the same and the special defenses set up is now in order.

The United States issued to S. D. Pitts on April 2, 1860, a patent "to the fractional southwest quarter of township 20 N., R. 16 west, according to the official field notes and plot of survey in the Government Land Office." The patent stated the land conveyed was 23 acres. As a matter of fact, Warren's map represents the fractional southwest quarter of section 10, containing 55.88 acres (there is a suggestion that Pitts actually intended to buy the southeast quarter of this section which is shown by Warren's map as containing 23 acres.)

But inasmuch as the title calls for the southwest quarter, this fractional southwest quarter according to Warren's field notes and directions actually contained approximately 48 acres (the volume of the 55.88 acres and about 7 acres as shown by Warren's map in this peninsular being in the northwest quarter of section 10). Pitts got the patent and paid for 23 acres.

As stated in the outset in this opinion, the lots or land in controversy here were not as a matter of fact embrased within the Warren line, but lie entirely out of the 48 acres which Pitts actually took under the Warren survey. The Jeems Bayou Hunting & Fishing

Club purchased from Pitts and succeeded to all the rights under his patent, no more and no less.

Certain preliminary defenses in this and the other cases were passed on by your honor and rejected. The contentions in the pleadings that the land in question was swamp and overflowed land and that it was uncovered by a recession of the water and belonged to Pitts and his succession in title as reparian owners is not pressed; in fact, the James Bayou Hunting & Fishing Club, in a suit No. 17707 on the docket of the District Court, Caddo Parish vs. Levee Board, denied that the land in controversy was ever swamp or overflowed land, and also denies "that the same has been formed either in whole or in part since its survey in the long ago." In other words, an admission that the land in dispute was actually in place as high land when Warren made his survey in 1839.

As above stated, I have already concluded that the land in dispute was in place as high land (equally as high and most of it higher than the land actually surveyed by Warren) when Warren made his survey, and I have also found that Warren did not actually survey this land, and that his survey, which purports to show a narrow peninsula at no point over 400 feet wide, with the lake on its western and northwestern boundary, in point of fact was not true; that the lake at the time of his survey was over half a mile away and at its nearest point on the south 725 feet distant; besides, there were lands in this section and section 3 subsequently surveyed by Boyd and Bristol which shows in Warren's map as water, which was actually high land in place, aggregating the whole 370.56 acres. In Warren's survey in this township, a grand total of 987.77 acres of high land in place at the date of his survey is shown to have been omitted from his map. Considering this to be true, defendants argue that the Government should be estopped from denying the verity of Warren's map at any time after third parties have bought, much less at this late day.

This leads to the law question involved. After a review of the authorities, my opinion is that the Government is not estopped when it is satisfied that there was manifest error or material variation between the traverse line of the lake represented on a map and the true border of the lake; but may order a survey and treat the land omitted from the first survey as public land, which has never been surveyed from the public domain.

The Supreme Court of the United States in 142 U. S. 161, states the law thus, as to the rights of the Government when it believes there is error or fraud in the surveys already made: "The power to make and correct surveys of public lands belongs exclusively to the political department of the Government, and the action of that department is unassailable in the court except by direct proceedings." 189 U. S. 35—Do 168 U. S. 589.

The case in 189 U. S., Kernan *vs.* Murphy, is directly in point. A survey was made by Howe, the U. S. surveyor, where the meander

line was at a considerable distance from a lake. The lake, in fact, existed, but not at the place represented on the plat. The result of the false meander was the omission of a large body of land between the so-called meander and the lake. The department ordered a new survey (as in the case at bar) and parties claiming the omitted body of land enjoined the execution of the survey, but the court rejected the injunction holding that the department not only has the power to make correction surveys, but "It must primarily determine what are public lands subject to survey and disposal." In a recent case decided by the Supreme Court of the United States, Lee Wilson & Co. *vs.* U. S., 245 U. S. 24, it is announced: "If in the making of a survey of public lands an area is through fraud or mistake meand'ed as a body of water or lake where no such body of water exists, riparian rights do not accrue to the surrounding lands, and the land department, upon discovering the error, has power to deal
52 with the meandered area, to cause it to be surveyed, and lawfully to dispose of it. Altho the general rule is that a meander line is not usually one of boundary, yet this meander line must have certain requirements stated below, and if it does not have those requirements it is a boundary line.

The case of Producers Oil Co. *vs.* Hanszen, first decided in the Supreme Court of Louisiana, 132 La. 691, and affirmed in the Supreme Court of the United States in 238 U. S. 325, settles the question as to whether Warren's so-called meander line in his survey of the southwest quarter of sec. 10, twp. 20, R. 16 (the land herein involved lying in that quarter section and actually in place in 1812 and 1839, as now) is to be treated as a true meander line, or whether it must be treated as a boundary line limiting the patentee to the actual area within the boundary. Both the Supreme Court of Louisiana and the Supreme Court of the United States decided that a surveyor's traverse fails in all respects as a meander line when it was made without regard to a body of water, and does not approximate its contour, or when substantial areas throughout the twp. lying between the so-called meander line and the body of water which it pretends to delineate have been omitted. In either case the traverse is a boundary of the adjoining patented lands and reparian rights do not accrue. Tested by this the so-called meander line established by Warren of this section, as above described, does not meet any of the requirements set forth by the Supreme Court of the United States, because:

(1) It is (at the point under discussion) not "an accurate survey of the meanderings of the watercourse."

(2) It does not show "the place of the watercourse and its sinuosities.

53 (3) It does not "define the sinuosities of the banks or the water."

(4) It is false, erroneous, and misleading in that it does not afford any reliable means of "ascertaining the quantity of the land in the fraction, subject to sale, and which is to be paid for

by the purchaser." 7 Wallace 272, R. R. Co. vs. Schumier. In 159 U. S., page 40, Howe vs. Smith, it is held that "It is unnecessary to speculate why it was that the surveyor (Warren in the case at bar) did not survey the omitted land; it may have been a mere oversight, but whatever the reason, the fact is obvious that no survey was made of that body of land." "Altho it was unsurveyed it does not follow that a patent for the surveyed tract (herein the Pitts patent) adjoining carries with it the land which, perhaps, ought to have been, but which was not, in fact, surveyed. The patent conveys only the land which is surveyed, and it is clear from the plat and the survey (i. e., the field notes, etc.) that the tract surveyed terminated at a point other than the real bank of the river, as the patent carries no land beyond the terminal fixed by the surveyor."

The land actually purchased and paid for by Pitts (as above stated, he actually got more than he paid for) was conveyed and covered by the description of courses and distances set forth in Warren's field notes and referred to in the Pitts patent, and the United States is concluded as to such land. Giving the patentee all of the land in areas stated in the patent and described and contained in lines and distances in such patent and which is all he paid for, protects him and his succession in title, and the Government should not be concluded by the fraudulent or gross negligence of its surveyor, 193 U. S. 167, Security Land & Ex. Co. vs. Burns (in 54 that case the real lake or water at the point in question was about half a mile away from the pretended meander).

Again, 232 U. S. 452, Gautier vs. Marian, "If the area in question designated and meandered as a lake was in truth high land susceptible of cultivation, it was as much public lands after the survey as if its true character had been reported by the surveyor; it was merely left unsurveyed (in that case there was no reference in the field notes or plat to the omitted areas). Do. 175 U. S. 300, 185 U. S. 30. In 232 U. S. 186-7, Chapman & Dewey L. Co. vs. St. Francis Levee Dist., "these public lands are patented as to the official plat of the surveyor returned to the Government Land Office by surveyors, but the notes, lines, landmarks and other particulars appearing on the plat must be considered in interpreting the patent.

The last expression of the Supreme Court in the above case of Wilson & Company vs. U. S. 245, U. S. 24, definitely settles the substantial point in controversy here. "If in the maps of a survey of public lands some area is through fraud or mistake meandered as a body of water or lake where no such body of water exists, reparian rights do not accrue to the surrounding lands, and the land department upon discovering the error has the power to deal with the meandered area, to cause it to be surveyed, and lawfully to dispose of it."

It is impossible therefore to escape the legal conclusion that lots contended for herein must be held to be public Government lands, the property of the United States, and that neither Pitts under his patent, nor the Jeems Bayou Hunting & Fishing Club nor its lessee

the oil companies have any title thereto. So holding, it remains to consider the claims of the Government for the oil and other minerals taken therefrom and the form of judgment that should be rendered against the defendant. The Government con-
55 tends that it is entitled to recover the value of oil extracted from the lots by the defendants, on the theory that they are all wilful trespassers and that the general rule is that the measure of damages for a tortious conversion is the value of the property converted with interest. My conclusion is that defendants herein are innocent of any intent to do wrong, and therefore the costs of extracting the oil and other minerals should be allowed. This embraces the cost of drilling and completing the wells and the cost of administering same in order to deliver the oil at the surface for delivery into commerce. This is the rule announced by our own Supreme Court in the case of Cook vs. Gulf Refining Co., 135 La. 609, and satisfies the equitable principle that no man should enrich himself at the expense of others.

Commonly speaking, minerals cannot be approved until brought to the surface and the true owner should undoubtedly be awarded their value at that stage, but not until the labor and expense of the person doing the work of bringing them from the bonds of the earth have been allowed where this person is acting in moral good faith tho under a mistaken idea as to the true conditions of the title. On this basis, I think the Government may recover not only from the oil company, defendants, who developed and brought to the surface the oil, but also from the marketing company who received the oil at the well from the producing company, and also from the persons to whom royalties were paid to the extent of such payment, C. C. of La., 2452, Thornton vs. Oil & Gas Co., page 43; 135 La. 990, Elder vs. Ellerbe.

Since all the evidence was put in there is no dispute as to the amount of the oil extracted and marketed from the wells up to June 30, 1917, inclusive. I find as a fact that the amount of oil
56 so extracted by the Producers Oil Co. and delivered to the Texas Company up to June 30, 1917, inclusive, to be 247,348.27 barrels, and that its value at the time of the extraction was $293,234.18.

I find that the cost of drilling and equipping the wells, operating same and delivering the oil at the surface, to be $113,912.45. The difference between these two items is $179,321.73, representing the net value of the production. Of this amount the Producers Oil Co. paid to the Jeems Bayou Fishing & Hunting Club $36,654.27 as royalties, leaving the Producers Oil Co. and the Texas Company the net amount of $142,667.46. These amounts must be returned to the true owner of the land, the United States.

I therefore recommend:

1. That the land in question be decreed to be the property of the United States.

2. That defendants be permanently estopped from transferring on same, or removing any oil or other minerals therefrom, and that they deliver the property to the United States and that the lease of said land by the defendants, Jeems Bayou Hunting & Fishing Club and the Producers Oil Company be annulled.

3. That the United States recover from the Producers Oil Co., and the Texas Company in solido, $142,667.46.

4. That the United States recover from the Producers Oil Co., the Texas Company, and the Jeems Bayou Hunting & Fishing Club, in solido, the sum of $36,654.27 for royalties paid by the said club.

5. I recommend further that the rights of the Government
57 be recovered from defendants of the value of all oil produced from the wells on the land since June 30, 1917, inclusive.

No. 1153, United States vs. Lane et al.
No. 1158, United States vs. Gulf Refining Co. of La.
No. 1162, United States vs. Southwestern Gas & Electric Co. et al.
No. 1163, United States vs. J. M. Walling et al.
No. 1164, United States vs. Robediere et al.

The above cases were consolidated for the purposes of trial and the following stipulations of fact were made by counsel for both sides:

1. "That the surveys made herein by Arthur D. Kidder, supervisor of surveys, and his associates and assistants, were made under instructions issued by the Commissioner of the General Land Office, as shown by letters of date September 27, 1913, and of December 1, 1916, from Clay Tallman, Commissioner of the General Land Office, to the said Arthur D. Kidder, supervisor of surveys, which will be offered in evidence herein by plaintiff, and that said surveys were made conformable to said instructions; that the surveys referred to herein are represented by certain official plats approved July 24, 1916, and March 28, 1917, which will be offered in evidence by plaintiff; that the plats made by the said Arthur D. Kidder, or under his supervision hereinabove referred to, correctly depict the surveys as made by him, and that all the figures, measurements, courses, distances, elevations, and topographic features shown on said plats are correct. It is also admitted that the said Arthur D. Kidder, supervisor of surveys, correctly reestablished and reproduced the survey made by A. W. Warren, deputy surveyor, of Township
58 20 north of range 16 west, in strict accordance with the said original Warren survey, the said original survey being represented upon the official plat approved August 31, 1839.

"2. That the contour line of 173.09 feet above mean Gulf level, established by the said Arthur D. Kidder, supervisor of surveys, as the mean high water elevation of Ferry Lake in 1812, when the State of Louisiana was admitted into the Union, and in 1839 when A. W. Warren made his survey of township 20 north of range 16 west, was in reality the mean high-water elevation of Ferry Lake

and James Bayou at such dates, and that the meander line of Ferry Lake and James Bayou as run by said Kidder follows said contour of 173.09.

"3. That all of the tracts in controversy in these suits lie above the mean high-water elevation of Ferry Lake as it existed in 1812 and 1839.

"4. That the various tracts of land lying between the meander line of Ferry Lake and James Bayou as run by the said Arthur D. Kidder, and the line represented as a meander line upon the plat of said original Warren survey hereinabove referred to, including the tracts in controversy in these consolidated causes were in 1812 and in 1839, at all times since said dates, and now are lands in place and of the same character, geological formation; and quality as the lands surveyed by said Warren, as aforesaid; that said tracts of land are now and were in 1812 and 1839 and at all times since said dates, what is known in this locality as hill land covered with native forest trees and vegetation characteristic of hill land, and that all of said lands were at the dates mentioned and at all times subsequent thereto uplands in character and existed as such at the time of the said Warren survey and in 1812.

59 "5. That the various tracts of land embraced in the extension survey of said Arthur D. Kidder, supervisor of surveys, and represented upon the plats aforesaid, including the property in controversy in these consolidated causes, were not formed by accretion, or by the recession, or reliction of the waters of Ferry Lake or James Bayou since 1812.

"6. That Ferry Lake is and was in 1812 and 1839 a navigable body of water.

"7. This stipulation shall not be construed as an admission upon the part of defendants that the land in controversy were not included within the survey made by A. W. Warren, as a matter of law; the defendants contending that under the Warren survey their titles extended to mean high water elevation.

"8. Plaintiffs and defendants shall have the right to offer evidence in these causes, and these admissions shall not be construed as preventing them, or any of them, from introducing additional evidence."

The total area involved in these suits is 79.95 acres. The Lane case involves lot 1 of sec. 3, T. 20 N., R. 16 west, and contains 5.67 acres. The Gulf Refining Company of La. involves 11.49 acres. The Southwestern Gas & Electric Co. involves 27.87 acres. The Walling case involves 12.72 acres. The LaRobediere case involves 22.20 acres.

It will be seen from the above stipulation that the land involved was of the same character as that in the Jeems Bayou Hunting & Fishing Club, i. e., high land with high-land timber growth, never at any time a part of the bed of the lake, but really the same quality and character of land as that actually within the Warren survey.

It is also admitted that Kidder's survey in retracing Warren's work is correct; and from this follows the admission that the various areas contended for shown as a result of Kidder's reproduction of Warren's work are correctly set forth, totalling 79.95 acres which were actually left out between the mean high-water mark of the lake and Warren's line. These admissions, which correspond with the evidence, which overwhelmingly proved the fact, put the cases in the same category, it would seem, with the Jeems Bayou Hunting & Fishing Club, wherein a finding in favor of the Government has just been made. Defendants, however, while conceding the above fact, contends these cases should be differentiated from the Jeems Bayou Hunting & Fishing Club case, because the areas involved in each of these cases are comparatively very small and that the maxim de minimis lex non curat should apply.

They contend that in these particular cases the lines run by Warren are substantially meander lines, admitting that, as contended for by plaintiff, at some points in skirting the shore of Ferry Lake Warren did abruptly (and technically speaking wrongfully) quit the shore line almost at right angles and deliberately left out, between his courses and the real senuosity of the lake shore, high timbered lands in place, but that he also embraced within his meander as land bits of water almost equalling the land left out, which resulted in the Government losing nothing, because in patenting the particular areas the Government got paid for as many acres as if Warren had carefully followed the contour and sinuosities of the lake—therefore, if Warren did wrongfully leave out between his meander and the actual shore the high timber lands, it is a case damnum obsque injuria so far as the Government is concerned.

61. On page 4 of their brief defendants say with respect to the Lane case, "With respect to the Warren survey Kidder admits taking the meander line as the boundary, there were included 0.9 acres of lake which never belonged to the United States, and there was omitted 8.38 acres of land which should have been included." Again, on page 5, "Kidder testifies that, taking the whole of the northern shore of Ferry Lake involved, sections 3, 10, 11, 2, 13, and 24 surveyed by Warren, the area of land lying between he Warren meander line and Kidder's establishment of the 173.09 ontour line was 69.56 acres, while the same meander line of Warn's included within his survey and shown as land an area actually ing in the lake and never belonging to the United States Governent of approximately 44 acres, thus reducing the actual acreage f land owned by the Government by the difference between 69.56 d 44 acres, or 25.56 acres of land." Also on page 5 the defendants on this point, "With respect to land contested for in suit 1164 being in sections 25 and 36, the area, 22.20 acres, is trivial when mpared with the quantity of land surveyed." Warren's map of ction 25 shows 29.25 acres; he left out 8.90 acres, or nearly one-ird of the land. The land contended for in sec. 24 is 11.49

acres. Warren's survey shows 114.80 acres not counting this 11.49 acres, or a shortage of about 10% of the actual high land. In section 13 the amount of land claimed as left out by Warren's survey is 27.87 acres; Warren's map shows 115 acres, nearly 16% of the actual area omitted. In sec. 10 the amount claimed herein as unsurveyed is 12.72 acres; the other land in this section left out as shown in Jeems Bayou Hunting & Fishing Club is 116.89 acres, or a total or 129.61. Warren's map shows 289.88 acres, which means nearly 30% of the actual high land in the section omitted by Warren.

62 Kidder describes the survey made by Warren of the land in sec. 3 as follows:

"In loot 1 of sec. 3 (United States vs. Lane), Warren began his traverse on the southern boundary of the section at a point which was then six feet under water. This point is not covered by the water now because the lake has receded. The second course emerges from the water, crosses the boundary of the lake, and begins to ascend the upland. His angle point 2 is above the 173.09 contour. The third course is through timber, undergrowth, and over highland above the 180-foot contour, and instead of being near the border of the lake is back in the woods and large timber. His fourth course left the highland and went back in the direction of the lake. The fifth course paralleled the border of the lake but was below the contour, being 6 feet lower than the mean water elevation. The end of the fifth course was exactly on the 173.09 contour. The difference in elevation between the first and second course is over 8 feet; that is, between angle points one and two."

Mr. Kidder says he sighted through the telescope along this course and found that he was actually "out from the lake to a point of lowland beyond the border of the lake. In measuring along the line we were going over the low hill which projects out into James Bayou, at this place running through upland, timber and undergrowth. There is nothing on the ground to indicate that the border of the James Bayou ever occupied that position."

The line does not parallel James Bayou and if intended as a meander it is absolutely incorrect, the error being manifest.

63 Warren began his traverse here below the mean high water elevation and returned to the bayou at a point which agrees exactly with the contour. The line runs over a hill, and as a result lots 1 and 2 of section 3 were omitted. These two lots contain an area of 8.38 acres in one compact body. Warren also omitted lot 3, containing 9.05 acres, making a total of 17.13 acres omitted in this section (57.64).

Plaintiff's brief contends as follows: Kidder describes Warren's survey of sec. 10 in reference to omissions of land contended for in lot 7 as follows:

"In lots 7 of sec. 10 (United States vs. Walling), Mr. Kidder found it necessary, in reproducing Warren's line through sec. 10, to begin at the meander corner on the eastern boundary of sec. 10, which

was set exactly on the 173.09 contour. After paralleling the lake for two courses from this point, Warren departed from it on the third course. Following the bearings and distances given in Warren's field notes, Mr. Kidder found that when he sighted through the telescope 'N. 78° W.' on the third course, the line ran back into the woods on high ground 8 feet above mean water elevation. The other courses were traced out in exact accordance with the Warren field notes. The turning points on the line bore no relation to the border of the lake and were made on upland a considerable distance from the water. On the last course Warren returned to the lake at the 173.09 contour. He departed from the lake at angle point 22, shown on the resurvey plat."

The same comment is made as to the way in which he departed from the shore line as respects the areas omitted in the other suits. In fact, an inspection of the supplemental map filed by plaintiff marked "F," and admitted by defendants to be absolutely correct, shows the angles and methods used by Warren in his de-
64 parture from the shore line in the cases complained of herein, and it can not be questioned that at the points named Warren failed to run a correct meander line showing the sinuosities of the lake shore, and at these points his line bears no true relation to the body of water, nor does it approximate a contour.

In reply to defendant's contention as to the comparatively small area involved in these consolidated suits, the Government's contention (which I find to be a fact) is that Warren's survey of township 20 N., R. 16 west omitted 1,047.67 acres of high land, 987.77 acres actually demonstrated as being omitted by subsequent corrective survey of Boyd, Bristol, and Kidder; the remainder of 59.90 acres left out "is made up of strips of ground between the traverse and the lake which were left out because the line was run at too high an elevation. In these instances, however, the traverse was run parallel with the lake and followed the contour with some degree of reason. Hence, no corrections were made in the survey in this respect. The actual water surface at the time of the Warren survey which was represented as land on his plat was 65 acres." Warren described the total area of this township as 10,328.09 acres, when in point of fact at the time of his survey and in 1812, when Louisiana came into the Union, the township actually contained 11,375.76 acres of high timber lands. Warren's omissions were nearly ten per cent of the whole land, and this area lying unsurveyed by Warren naturally remained as the property of the United States. Defendants, however, contend that the areas included in these suits, which undoubtedly lie outside of the actual so-called meander line of Warren and between it and the mean high-water mark of the lake shore, should be held to have passed to them under the patents obtained by their authors in
65 title because the meander lines of Warren of the Ferry Lake shore are strictly meander lines defining the sinuosities of the water, altho a pronounced *divigation* was made by Warren from the shore line at the points complained of. The defendants do not deny

that their authors in title got the acreage called for by the map of Warren and the patent; they only claim that taking the whole of the northern shore of Ferry Lake, including sections 3, 10, 11, 12, 13, and 24 surveyed by Warren, the area of land lying between the Warren meander line and Kidder's establishment of the 173.09 contour line was 69.56 acres, and that Warren's survey included within it about 44 acres as land which in fact was water; so the Government, as respects this part of the township, would only lose the difference, or 25.56 acres, which defendants virtually admit still technically remain in the Government as left out of the Warren survey. As above stated, there is no complaint by the original patentees of any of this land that they paid the Government for water instead of land and that they are entitled to relief from the Government; on the contrary, as far as area is concerned in the original patenting of these lands, the area marked on the map and actually surveyed by Warren was accepted as land and must be presumed as closed, and defendants can not now eke out any title to land, admittedly not within the boundaries of the property patented, on the ground that their ancestor in title did not get quite the acreage and therefore the present defendants are entitled to hold entirely new areas belonging to the Government as an offset. Title to new and separate areas of land can not be acquired in this way. Legal title to land from the sovereign Government can be acquired in only one way—by written transfer, commonly called a patent. Boldly stated, the proposition of defendants is in effect that if the Government has made a
66 gain by selling water for land, the real fact as to this contention as respects this township is as follows:

As stated above, Warren left out, as is now conceded, 1,047.67 acres of high land from his survey. In this township defendants contend that it would be equitable to permit the occupant of a piece of unsurveyed land in this township, which land is about equal to the water area previously sold in various parts of the township, to compensate and defeat the Government's claim for said unsurveyed land by replying to the suit, "you have already been paid for all the land actually in this township and I should keep this piece and you will really suffer no loss." As stated above, defendants can only keep the areas in question by showing title. They contend the area is so little, and when it was left out by Warren so utterly worthless, that the Government's claims should be dismissed on the ground of de minimis lex non curat. It is true that most of the cases dealing with the discussion of the difference between a meander line and a boundary line (the question herein involved) deal with larger areas than in these present consolidated cases, and in these areas the courts have not hesitated to apply the principles contended for by the Government in these cases. For instance, in the case of the Jeems Bayou Hunting & Fishing Club the area actually involved was 85.22 acres. In the survey of Warren, his intention to leave out of his survey lands which he should have included, according to law and his duty, was manifested just as plainly in his omission of 10 acres as in the

case of a hundred acres, and if in the case of the omission of a hundred acres the claimants' contention is rejected and the 100 acres held to be public land belonging to the United States, why should the sale be different as respects the claimant of 10 acres? It is true that ordinarily litigations do not arise unless the fight is worth while as to values, and it may be that the Government, but for the discovery of oil or gas in this region, would not have elected to bring suit when only 10 or 25 acres were involved, but its right to do so would have been in existence even tho it elected not to enforce it. As a matter of fact, these comparatively small pieces of land are now of great value, these in the above consolidated cases valued at over $100,000.00. It seems to me the rule repeatedly announced by the Supreme Court of the United States in defining the differences between a boundary line and a true meander line must and should be applied regardless of the superficial area involved. In these 17 suits the areas in question range all the way from 5.67 to 85 acres, and the proof is just as clear in the smallest as in the largest area that Warren's so-called meander lines (at the points complained of) violated the rules respecting such line, to wit, that they must in fact fairly represent the sinuosities of the body of water and practically approximate and parallel the same.

I find as a fact that as the points complained of these lines of Warren were not run according to the above principles, but that he arbitrarily in such instances left the shore at right angles thereto, blazed his way thro highlands heavily timbered, and then returning to the shore line some distance apart from his departure. The lands so left out must be held to be unsurveyed public lands, and I find in favior of the Government that the areas herein involved are in that category and should be decreed to be the Government's property.

For the reasons given in the Jeems Bayou Hunting & Fishing Club, I do not consider the defendants herein in moral bad faith, and consider that the expenses incurred by them in drilling, equipping, and administering the wells on the premises should be allowed in settling with the Government. The amount of oil extracted by the Producers Oil Company and taken away by the Texas Company I find as follows:

In 1153, United States vs. Lane et al., 42,735.23 barrels, and the value thereof, $36,430.73. Amount for drilling well and operating same, $16,047.23. The difference between the total value of oil and counterclaim, $20,383.50.

The royalties paid were:

To C. D. Lane, $1,517.95.

To Board of Commissioners, Caddo Parish Levee Board, $4,553.84.

I find there should be judgment against:

1. The Producers Oil Co. and Texas Co., in solido in the amount of $14,311.44, being value of total production less counterclaim and royalties.

2. The Producers Oil Co. and Texas Co. and C. W. Lane in solido the sum of $1,517.95, amount of royalties paid Lane.

3. The Producers Oil Co., Texas Co., and Board of Commissioners, Caddo Parish Levee Board, in solido, for $4,553.84, amount royalties paid Board of Commissioners, Caddo Parish Levee Board.

In suit 1158, United States vs. Gulf Refining Company, I find the total production herein to be $6,986.62, but the drilling and operating expenses were, as I find, $10,191.00 and no royalties paid. The well was not profitable and the Gulf Refining Co. actually lost money in the operation, so I recommend no money judgment against the defendants in this case, only a decree in favor of the Government as

owners of the land and entitled to possession thereof.

69 In United States vs. Southwestern Gas & Electric Co., No. 1162, I find the total value of oil extracted to be $29,946.9 (32,034.87 barrels), plus the pine line earnings, $3,203.48—total income secured by the Gulf Refining Co. from the well. The expense of drilling and operating was $12,784.68. The royalties paid to Caddo Oil Co., $933.30. The royalties paid to the Southwestern Gas & Electric Company, $747.99.

I recommend judgment against:

1. The Gulf Refining Co. of La., for $4,899.91, being difference between the royalties and counterclaims and total value of production, not including oil contained in pipe line.

2. Against the Gulf Refining Co. and Caddo Oil and Gas Co. in solido for $933.30, amount royalties paid to Caddo Oil & Gas Co. by Gulf Refining Co.

3. Against Gulf Refining Co. and Southwestern Gas & Electric Co. in solido for $747.99, amount royalties paid the Southwestern Gas & Electric Co., as to which no expense was incurred.

In 1164, United States vs. LaRobadiere et al.

In this case the oil produced by the Gulf Refining Company was $8,200.60 in gross value, with a counterclaim for expenses actually incurred for drilling and operatng of $12,771.25. There were royalties paid to Mrs. LaRobediere amounting to $3,075.21, and there should be judgment against her for that amount.

As the well was a losing venture for the Gulf Refining Co., I think no judgment in money should be given against it, but simply again

it giving the land as belonging to the Government.

70 It appeared in the course of the trial that an added royalty was paid to Blanchard, Barret & Smith of $1,205.07, and the right to litigate this matter is reserved to the Government.

No. 1163, United States vs. J. M. Walling et al.

I find the oil produced by the Gulf Refining Company of La. of the value of $77,278.79, with a counterclaim for drilling and operating, $20,643.87; difference between gross value of oil and the counterclaim, $56,634.87 for which judgment should go against the Gulf Refining Company.

It appeared in the trial that royalties had been paid by the Gulf Refining Co. to H. L. Heilperin, Natalee Oil Co., J. A. Thigpen and S. L. Herold, and the rights of the Government should be reserved as against them.

No. 1155, United States vs. Chas. J. Green et al.
No. 1160, United States vs. W. H. Enders et al.; consolidated.
No. 1165, United States vs. A. C. Loucks et al.

Two of the above cases were consolidated, the third tried separately, but they are not distinguished, however, from the other cases already considered by me, and the facts are practically the same and the law applicable thereto practically the same as in the cases already considered by me.

The Greene case involves lots 2 and 3, sec. 27, containing 65.77 acres, as shown by supplemental map of plaintiff marked "F." The defendants claim under a patent calling for 147.25 acres as per Warren's survey; they got all their acreage and are claiming the 65.77 acres never surveyed by Warren, or more than a third of the area actually purchased by Green from the United States; if defendants' contention is upheld he would have 213.03 acres when he actually bought and paid for 147.25 acres. The methods used
71 by Warren in leaving out of this survey high timbered lands above overflow in the cases already decided were used in this case, it being abundantly proven in these three cases that Warren ran his so-called meander line as far as 1,200 feet from the true shore, working his way through high lands well timbered. This is well illustrated on the map F, and also on the topographical map in evidence marked "Plaintiff B." The well was not profitable, the expense of drilling and operating incurred by the oil company exceeding the value of the oil, and no judgment for money should be made against the Amateur Oil Company, but the Louisiana Oil Refining Co. bought the production from the Amateur Oil Co., and out of the oil paid a royalty to Greene of $210.79, for which there should be judgment in solido against it and Greene. Afterwards the Louisiana Oil Ref. Company took over the well and paid a royalty to Greene of $186.78 and made a profit on its production of $557.75 net production after deducting the cost of production.

There should be judgment, therefore, against:

1. C. J. Greene and Louisiana Oil Refining Co. in solido for $210.79.

2. Louisiana Refining Corporation, $557.78.

3. Louisiana Refining Corporation and C. J. Greene in solido 185 65, and against all defendants recognizing the land as the property of the United States. In this case Greene virtually acknowledged that this land was United States property. He made on Jan. 22, 1913, a mineral location embracing fractional NW. ¼ of section 27, between the traverse line and the lake. In this location the land is referred to as "unsurveyed." He did same on June 17, 1910, "for all lands below the United States traverse in NW. ¼ sec. 27."
72 No effort to develop the land under this location was made, but this incident shows he did not consider that he was the riparian owner of the area in dispute.

No. 1160, United States vs. Enders et al. ...

This property embraces 66.20 acres, being lots 5 and 6 of sec. 9, and immediately adjoining the land in controversy in Jeems Bayou Hunting & Fishing Club, lying between said Jeems Bayou Hunting & Fishing Club land and Ferry Lake. There was no serious dispute of the Government's title, defendants' pleadings asserting they had no convictions on the subject, but that during 1910, veritably believing same was Government land, made a mineral location prior to the time of the withdrawal order of the President, December 15, 1908. The Standard Oil Co. entered a plea of nolle contendere, but admitted it had taken oil from the land under a division order and paid the purchase price to Heilprin and asked for judgment against him in case it was held. The defendants really make no serious claim to the property as owners, but content themselves under the mineral location. The proof of the Government's ownership is as complete as in the Jeems Bayou Hunting & Fishing Club case and for the reasons therein given, judgment recognizing the United States as owners of the area in question should be entered.

As to the claim on the mineral location, your honor has already decided that the withdrawal order of Dec. 15, 1908, was applicable to this land. So it appears defendants are without any right or legal title to the land. The Standard Oil Co. admit running oil from the land valued at $1,577.24 and paid out in royalties to the mineral locators $197.16. Judgment should go against the Standard Oil Company for $1,380.08 (with reservation of its rights to recover this amount and the $197.16 royalties against Heilprin, from
73 whom they purchased the oil) and against the defendants, Levi Cooper, W. T. Crawford, W. H. Enders, and Standard Oil Co. of La. in solido for $197.16. I recommend a judgment in favor of the United States for the land in question as prayed for by the petition, and for the above amount against the defendants.

No. 1165, United States vs. A. C. Loucks et al.

The area involved is 14.13 acres, being lot 1 of sec. 27. The evidence in the Greene case and Jeems Bayou case was offered herein besides the testimony of Kidder and others, who with him explored the status and character of these omitted areas, and for the same reasons heretofore given by me in the cases already decided I find the area in question was high timbered land omitted by Warren from his survey (the defendants traced title to a patent from the United States conveying 123.49½ acres, and the original patentee and the defendants got this full acreage independent of the area of 14.13 acres herein claimed) and that judgment should go in favor of the United States as being the owner of the said area as not having been entered in Warren's survey. It remains to consider what money judgment should be rendered.

For the reasons given in the early part of this report, citing Cook vs. Gulf Refining Co., 135 La. 610, and in case of Elder vs. Ellerbe et al., 135 La. 990, before any recovery by the Government for oil extracted, I think the cost of drilling and equipping the wells and operating same should be deducted.

Inasmuch as the well cost to drill and operate $8,439.37, and the total oil taken out was only $494.00, no judgment should go against the Producing Co., to wit, the Standard Oil Co., but out of the exploration and operation Loucks received 61.75 and the Gulf Refining Co. 52.42, and there should be judgment against them in favor
74 of the United States for those amounts and I so recommend.

In the discussion of each case under the title of "Quantum and basis of recovery," the contentions of the Government with respect to the amounts which should be allowed are set forth in detail. There should be a decree in favor of the Government in the respective sums heretofore stated. In addition to the recommendations previously mentioned, it is respectfully recommended:

1. That the lands involved in the respective suits be decreed by this court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

2. That the muniments of title under which the defendants claim may be declared null and void and held as nought in so far as they may include, directly or indirectly, the property in controversy in these suits, and, to that extent, that the said leases and transfers be cancelled and annulled. This recommendation, of course, does not include the patents on which the claims of riparian ownership are predicted, the validity of which patents is not denied by the Government. The patents, however, do not include any property in suit. This prayer of the bill of complaint relates to the leases and other transfers by which a conveyance of the various tracts was sought to be made.

3. That the lands described in the bills of complaint be adjudged and decreed to be the property of the United States, free and clear of all claims of the defendants, and that the possession of said land may be restored to plaintiff.

75 4. That said defendants during the progress of this cause, and finally and perpetually thereafter, may be enjoined from setting up any claim to said lands or any part thereof, and from creating any cloud upon the Government's title to the same, or to any of the oil, gas, or minerals on or under the same, and from going upon said lands, or in any manner using the same, or extracting oil or other minerals therefrom.

5. That a receiver be appointed by this court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities thereon used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas, and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and to preserve the same.

6. That defendants be ordered, directed, and required to make a full, true, and accurate accounting to plaintiff of all oil extracted from said lands since January, 1918, and to pay plaintiff the value thereof as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced since January 1, 1918, be reserved.

In all of the above recommendations for payment of money judgments I recommend that interest be allowed thereon at the rate of 5% per annum until paid, from the filing of this report.

Respectfully submitted,

E. H. RANDOLPH,
*Master in Chancery.*

76 Indorsed: Opinion and recommendations, E. H. Randolph, of the master in chancery. Recorded in Chancery Order Book, vol. 5, folio 559–587. Filed Jan. 11, 1919, 11:25 a. m.

*Plaintiff's exception to master's report.*

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES OF AMERICA
*vs.*
A. C. LOUCKS ET AL. } No. 1165.

Now into this honorable court comes plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, master in chancery herein, in so far as the said report recognizes the defendants as innocent trespassers, and allows the counterclaims filed by them, for the following reasons, to wit:

1. The master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the Secretary of the Interior, withdrew the land in controversy from settlement, entry, or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended, and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President, July 2, 1910.

77 The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the case of the United States vs. Sam W. Mason et al., No. 1172, on the docket of this honorable court, being plaintiff's Exhibits A, B, C, D, E, F-1, 2, 3, 4, 5, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, which said exhibits were offered in evidence in the case of the United States vs. Jeems Bayou Fishing & Hunting Club et al. No. 1157 (record in said cause p. 9), and all testimony in said case was offered by reference in the present cause (record in present suit p. 1). The court held in the said Mason case that the withdrawals included township

20 N., range 16 west, and prohibited mineral locations on the public lands described therein, which ruling is applicable to this suit, and was so recognized by the master in his report.

2. The well drilled by defendants on the land in controversy was not begun until the year 1913. (Testimony of James W. Neal, record 29.)

3. That no testimony was offered by defendants, nor otherwise adduced, to show that they acted in good faith in drilling and operating the wells in question. That the defense of innocent trespass is an affirmative defense, and the defendants did not prove, or attempt to prove, that they extracted and removed the oil from plaintiff's land through mistake or inadvertence, nor did they show that they acted on the advice of counsel, or in the belief that they were the owners of the property. The wrongful taking of the property of another, in the absence of all other evidence, raises a presumption that the trespasser took it intentionally, wilfully, 75 or in reckless disregard of the rights of the owner, and this presumption was not overcome, nor sought to be overcome, in any manner whatever by defendants.

Wherefore, plaintiff prays that these exceptions be sustained, and accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against the defendants as follows, to wit:

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| (a) Against A. C. Loucks, the Star Oil Company, K. W. Brown, C. W. Brown, and the Gulf Refining Company of Louisiana in solido, in the sum of | $61.76 |
| (b) Against K. W. Brown, C. W. Brown, Star Oil Company, and the Gulf Refining Company of Louisiana in solido in the sum of $432.32, being value of production, as shown by the master's report, less royalty of $61.76 | 432.32 |
| Said sums aggregating | 494.08 |

being total value of production, as shown by the master's report.

Plaintiff prays that in all other respects the said report and recommendations of the master be confirmed and made the decree of this honorable court. Prays for all orders and decrees necessary, and for general relief.

ROBERT A. HUNTER,
*Special Assistant to the Attorney General.*

Indorsed: Plaintiff's exceptions to the master's report. Filed Jan. 30, 1919.

In the District Court of the United States for the Western District of Louisiana.

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| UNITED STATES OF AMERICA, PLAINTIFF, *vs.* A. C. LOUCKS ET AL., DEFENDANTS. | No. 1165. In equity. |

Now comes the Gulf Refining Company of Louisiana, one of the defendants herein, and excepts to the report of E. H. Randolph,

Esquire, special master, filed in this cause on the 11th day of January, 1919, and for cause of exception shows:

1. That the master has in his said report stated and certified that judgment should be rendered against this defendant in the sum of $52.42; whereas he should have reported and certified that no judgment should be rendered against this defendant.

2. The said master has in his report stated and certified that this defendant should be held liable for the pipeage charges on oil purchased by it from the other defendants; whereas he should have stated and certified that no such judgment should be rendered.

Wherefore, defendant prays that these exceptions be sustained and that judgment be rendered in its favor accordingly.

THIGPEN & HEROLD,
*Solicitors for Defendant, Gulf Refining Company of Louisiana.*

80 Indorsed: Exception of Gulf Refining Company of Louisiana to the report of the special master. Filed Jan. 30, 1919.

*Opinion of the court.*

In re Government Oil Suits. Western Dist. of Louisiana.

Beginning in July, 1917, the United States filed eighteen suits against various persons to have certain land decreed the property of the United States, withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States; to cancel certain leases of the said land to various oil companies; to enjoin any further exploitation of the land; and for an accounting from the various parties who had drilled for oil, or purchased it from the drillers, or otherwise had come into possession of the oil.

The cases were referred to the Honorable Edward H. Randolph, as special master, and in due course he filed his reports. The land in controversy is all located in what is known as the Caddo Lake, or Ferry Lake, oil district, in Caddo Parish, Louisiana. In each case the master has reported in favor of the United States and has stated an account against the defendants who claim to own the land, against those who hold under oil leases and those who have purchased the oil extracted, either from the owners or lessees.

Certain fundamental facts govern all the cases. It appears that in 1838 most of the land in question was surveyed for the United States by Warren. In making his survey he undoubtedly left
81 out certain portions of land, inconsiderable as to acreage but now extremely valuable because of the underlying oil deposits. In 1916 the land was resurveyed by Kidder and the disputed areas included in the survey. Some of the defendants claim riparian rights to the land. There is no doubt, however, that all of the land included in the resurveys was high land in place at the

time the original survey of Warren was made, and he simply was in error in running his lines, which is not at all surprising considering the unsettled character of the land at that time and the difficulties surveyors must have encountered.

The land was withdrawn from entry first by a proclamation of President Roosevelt in 1908, and later by proclamation of President Taft in 1910. The land lies adjacent to Caddo or Ferry Lake and Jeems'or James Bayou. It is contended by some of the defendants that Warren intended the actual shore line to be the boundary line of his survey, and the lines he actually ran, or reported that he had run, were meander lines to determine the approximate areas of the survey. In some of the cases it is admitted that the land is public domain and the defendants claim under the mining laws. A further contention is made that *that* there was no ownership of the oil in the Government; that oil is different to minerals of a solid character and is not susceptible of ownership until brought to the surface and separated from the soil. The master has found against all of these contentions, and in clear and able opinions has disposed of them. It would be useless for me to attempt to supplement the report of the master, and in my opinion his findings should be approved. The master allowed interest from the day of the filing of his report. It is contended if ultimate judgment is against the defendants interest should be allowed only from the day of judgment. Again I must agree with the master. The filing of his report is tantamount to the verdict of a jury and it is usual to allow interest in Federal courts from the date of verdict rather than from the date of judgment. It is particularly urged that there could be no judgment against the various pipe lines who purchased the oil from the drillers on the theory above stated that the Government had no ownership in the oil until reduced to possession. I cannot agree with this contention, either. The ownership of the Government is somewhat different to that of a private proprietor and the integrity of the Government's title in any and all considerations demands that it should have a right of action against any one profiting by a violation of the laws of the United States intended as conservation measures.

The Government has excepted to the report of the master in allowing the defendants to set-off as against the judgment for the value of the oil the cost of producing it, contending that the parties were not in good faith. Considering the extreme uncertainty of the law and all of the facts in the case, I must decide this point against the Government. This disposes of the general contentions in all the cases.

In suit No. 1155, U. S. vs. C. J. Greene, it is contended in argument that the master's report was erroneous in rendering judgment against the Louisiana Oil Refining Corporation and not against the Amateur Oil Company, from whom it purchased. This objection is not made in the exceptions to the master's report filed. The master found there should be no judgment against the Amateur Oil Com-

pany because the well was not profitable and the expense of drilling and operating exceeded the value of the oil. He recommends judgment against the other defendants, however, because they actually got the oil. I see no reason to disagree with the conclusions of the master. The decree will not prevent an adjustment of equities between the parties.

83 In case No. 1160, U. S. vs. Henly et als., it is contended in argument on behalf of the Government that no counterclaim was plead or proved. I find no special exception in the record to this effect. The judgment as recommended is supported by the answers to interrogatories in the record.

The case of the U. S. vs. Thomas J. Stockley, No. 1166, is the only case presenting any difficulty, but considering the views expressed in overruling the preliminary objection, I think on the whole the master's report should be confirmed.

The labor of the court in these complicated cases has been much lightened by the master through his able report and by counsel through their fair and lucid arguments and briefs. All of them are entitled to the thanks of the court.

All exceptions will be overruled and decrees will be entered in all these cases in accordance with the suggestions of the master. Jurisdiction in each case will be retained for the purpose of adjusting any further equities betwen the parties.

RUFUS E. FOSTER, *Judge.*

July 15/19.
Opinion. Filed July 17, 1919.

84 *Decree.*

In the District Court of the United States for the Western District of Louisiana—Shreveport Division.

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| UNITED STATES OF AMERICA,<br>*v.*<br>A. C. LOUCKS, STAR OIL COMPANY, Gulf Refining Company of Louisiana. | No. 1165—In equity. |

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

I. That the report filed herein January 11, 1919, by E. H. Randolph, special master in chancery, be and the same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint, namely, lot one (1) of section twenty-seven (27), in township twenty (20) north, range sixteen (16) west, Louisiana meridian, of Louisiana, situated in the Parish of Caddo, Western District of Louisiana, as shown by plat of survey approved March 28, 1917, by Clay Tall-

man, Commissioner of the General Land Office, and ex-officio surveyor general for the State of Louisiana, be and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

III. That any and all deeds or instruments of writing of any kind or nature whatever, under which defendants, or any of them, may claim the said land, be decreed to be clouds upon plaintiff's title, and that the same be declared null and void, in so far as they may include directly or indirectly the above described property, and, to that extent, that said deeds or other instruments of writing be cancelled and annulled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendants, namely, A. C. Loucks, Star Oil Company, K. W. Brown, Robert L. Stringfellow, C. W. Brown, and the Gulf Refining Company of Louisiana, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas, or other minerals, on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue restraining, enjoining, and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of A. C. Loucks, and the said defendant is hereby condemned and ordered to pay to plaintiff, the full sum of sixty-one and 75/100 ($61.75) dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover or and from the Gulf Refining Company of Louisiana, and the said defendant is hereby condemned and ordered to pay to plaintiff, the full sum of fifty-two and 42/100 ($52.42) dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VIII. That the said defendants be, and they are hereby, ordered, directed, and required to make a full, true, and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom,

and that all of plaintiff's rights to recover the oil produced from said land by defendants since January 1, 1918, be reserved.

IX. That the said defendants be, and they are hereby, condemned and ordered to pay all the costs of this suit.

X. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport, Louisiana, be, and he is hereby, appointed receiver to take possession of said land and of all wells, improvements, and drilling paraphernalia thereon, and any other property and instrumentalities on said land used for the purpose of drilling and extracting, storing, and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas, and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, condemned, and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells, and instrumentalities thereon, upon the approval of said receiver's bond by the clerk of this court. The said receiver shall, within 90 days
87 from the date of this decree, furnish bond, with good and solvent surety, to be approved by the clerk of the United States District Court in and for the Western District of Louisiana, in the sum of five hundred ($500.00) dollars, which said bond may hereafter be increased or reduced as the court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil, or property that may come into his hands as receiver. The said receiver shall surrender possession of said land and of all the property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of this court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the court to supervise, direct, and control the acts of the said receiver, to obtain such accounting from the said receiver as the court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the administration of said receiver, and the termination of said receivership, and to issue such further orders in the premises as the court may deem necessary.

Thus done, read, and signed in open court this 4th day of August, 1919.

RUFUS E. FOSTER,
*United States Judge.*

Indorsed: Decree. Filed Aug. 12, 1919.

88 *Petition for rehearing.*

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES OF AMERICA, PLAINTIFF,
*vs.*
A. C. LOUCKS ET AL., DEFENDANTS. } No. 1165—In equity.

The petition of the Gulf Refining Company of Louisiana, defendant herein, shows:

1. That it is aggrieved by the decree entered herein and signed by your honor on the —— day of August, 1919, condemning it to pay to the plaintiff the sum of fifty-two and 42/100 ($52.42) dollars, together with five per cent (5%) per annum interest from January 11th, 1919; and avers that errors have been committed in the rendering of said decree in this, to wit:

2. That the court erred in condemning this defendant in the said sum of $52.42, when, according to the uncontradicted testimony and to the master's report, this defendant had made no profit whatever from the property. The evidence in the case shows, and the master so held, that this defendant had nothing to do with the drilling on said property, but purchased part of the oil produced by the principal defendant, which it sold at the same price at the Texas line to its affiliated company, the Gulf Pipe Line
89 Company plus a reasonable pipeage charge from the Caddo oil field to the said line, which amounted to fifty-two and 42/100 ($52.42) dollars. The principal defendant in this case, the Star Oil Company, was not condemned in any amount, since the cost of drilling, equipping, and operating the well in controversy exceeded the total value of the oil extracted therefrom. Since the principal defendant was not condemned, and since the pipe-line company would be liable only secondarily, there is no foundation for any judgment against this defendant; certainly none for condemning it for a pipe-line charge, which was not shown to have been in excess of a reasonable cost of transportation.

Wherefore, petitioner prays for a rehearing of this cause, submitting itself to any order that may be made by your honor should the petition be finally denied.

THIGPEN & HEROLD,
*Solicitors for Defendant Gulf Refining Company of Louisiana.*

*Order.*

Let the above petition be filed and let the plaintiff, through its solicitor, show cause before me on the first day of the next term of

court in Shreveport, Louisiana, why the prayer of the petition should not be granted.

RUFUS E. FOSTER,
*United States District Judge.*

August 4, 1919.

Indorsed: Petition for rehearing. Filed: August 13, 1919.

90 *Chancery order book, vol. 5.*

714.
United States District Court for the Western District of Louisiana.

UNITED STATES OF AMERICA,
*vs.*
A. C. LOUCKS ET AL. } No. 1165—In equity.

NEW ORLEANS, LOUISIANA, *December 4th, 1919.*

In this cause the motion for rehearing which was heretofore filed came on this day for hearing before Hon. Rufus E. Foster, the plaintiff being represented by Robert A. Hunter and the defendant by S. I. Herold, after argument and consideration by the court,

It is ordered, that this motion be overruled.

*Plaintiff's petition & order for appeal & assignment of errors.*

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES OF AMERICA,
*vs.*
A. C. LOUCKS ET AL. } No. 1165—In equity.

*To the honorable the Judge of the District Court of the United States for the Western District of Louisiana:*

Now into this honorable court comes the United States of America, plaintiff in the above numbered and entitled cause, and, with respect, represents:

91 That on August 4, 1919, this court entered a final decree in said cause, and that in said decree there was, in part, error greatly to the prejudice and injury of plaintiff, as will more fully appear by the assignment of errors filed herewith. Plaintiff desires to take an appeal from said decree to the United States Circuit Court of Appeals of the Fifth Circuit.

Wherefore it is prayed that an appeal may be allowed to plaintiff in this cause from this court to the United States Circuit Court of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this court.

ROBERT A. HUNTER,
*Special Assistant to the Attorney General.*

*Order.*

The foregoing petition for an appeal (with assignment of errors attached) being considered,

It is ordered, that the United States of America, plaintiff in the above numbered and entitled cause, be, and is hereby, granted and allowed an appeal herein from this court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 1st day of January, 1920.

RUFUS E. FOSTER,
*United States Judge.*

92 *Assignment of errors on plaintiff's appeal.*

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES OF AMERICA
*v.*
A. C. LOUCKS ET AL. } No. 1165—In equity.

Now comes the plaintiff, the United States of America, and in connection with its petition for an appeal herein presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to wit:

I. The court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy the counterclaim of the Star Oil Company for costs and expenses incurred in producing said oil, and not entering a decree in favor of plaintiff for the total value of said oil.

II. The court erred in allowing to said defendant, as an offset or counterclaim, the cost of the production of said oil, and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by orders of the President of the United States, dated, respec-

93 tively, December 15, 1908, and July 2, 1910, which orders were issued for the purpose of conserving the public interest and in aid of pending and proposed legislation. The said well was drilled in violation of each of said orders and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precluded the consideration of any equitable benefit to the United States from the drilling and operation of said well.

III. The court erred in applying herein the rules relating to a case of innocent trespass, for the reason that there was no evidence to show that the defendants acted in good faith in extracting and removing the oil in question.

IV. The court further erred, in any event, in finding and holding that said defendants were entitled to deduct from the value of the

oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit, or counterclaim.

Wherefore, plaintiff prays that the said decree be reversed in so far as it allows the said offset or counterclaim for the cost of drilling, equipping, and operating the well in suit, and that a decree be rendered and entered in favor of plaintiff herein for the full value of the oil extracted and removed from said land, as shown by the report of the master in chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to
94 enter a decree in favor of plaintiff for the full value of said oil, without offset or deduction of any kind.

Plaintiff further prays that, in any event, the costs of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or counterclaim herein.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,
*Special Assistant to the Attorney General.*

Indorsed: Plaintiff's petition for appeal, order allowing same, and assignment of errors. Filed Jan. 3, 1920.

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES OF AMERICA, PLAINTIFF,
*vs.*
A. C. LOUCKS ET AL., DEFENDANTS. } No. 1165 In Equity.

*To the honorable Judge of the District Court of the United States for the Western District of Louisiana, sitting within and for the Shreveport Division:*

All the defendants in the above-entitled and numbered cause, feeling themselves aggrieved by the decree made and entered in this cause on the 12th day of August, 1919, and by the refusal of rehearing thereof on the 4th day of December, 1919, hereby appeal from said decree to the Circuit Court of Appeals for the Fifth
95 Circuit for the reasons specified in the assignment of errors, filed herewith, and now pray that their appeal be allowed with supersedeas, and that citation issue as provided by law, and that a transcript of the record, proceedings, and papers on which said decree was based, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans.

And your petitioners further pray that the proper order touching the security to be required of it to perfect said appeal be made.

WILKINSON, LEWIS & WILKINSON,
THIGPEN & HEROLD,
*Solicitors for Defendants.*

*Order.*

Let the foregoing petition be granted and the appeal allowed, which shall operate as a supersedeas upon the defendants giving bond as required by law in the sum of two hundred and fifty dollars.

Jan. 10/1920.

RUFUS E. FOSTER,
*United States District Judge.*

Indorsed: Motion and order for appeal. Filed Jan. 12, 1920.
B

*Defendant's assignment of errors.*

In the District Court of the United States for the Western District of Louisiana.

| | |
|---|---|
| UNITED STATES OF AMERICA, *vs.* A. C. LOUCKS ET AL., DEFENDANT. | No. 1165—In equity. |

And now, on this the 10th day of January, 1920, comes the defendant Gulf Refining Company of Louisiana by its solicitors, Thigpen & Herold, and says that the decree entered in the above case on the 12th day of August, 1919, and the refusal of a rehearing thereof on the 4th day of December, 1919, is erroneous and unjust to the defendants; and for specification of errors, shows:

First. The court erred in holding that this defendant, which produced no oil from the premises in controversy, but merely purchased the oil produced by other defendants, incurred any liability in so doing.

Second. The court erred in holding that the purchaser of oil produced by the actual bona fide possessor of a tract of land can be held liable to the owner of the land on account of the purchase of such oil.

Third. The court erred in holding that this defendant was liable to plaintiff in any amount, when under the uncontradicted testimony the defendant has made no profit whatever from the property.

Fourth. The court erred in condemning this defendant to pay the sum of $52.42 upon the evidence merely that this defendant sold the oil in Texas for the price at which it was purchased from the other defendants herein, plus only a pipage charge to cover the expense of the carriage of said oil.

Fifth. The court erred in condemning this defendant in any amount when at the same time it held that the plaintiff had sustained no loss and exonerated the defendants who had produced the oil from any liability.

Wherefore, defendant prays that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

THIGPEN & HEROLD,
*Solicitor for Defendant.*

Indorsed: Assignment of errors on the part of Gulf Refining Co. of La. Filed Jan. 10, 1920.

98 *Supersedeas bond on appeal.*

In the District Court of the United States for the Western District of Louisiana.

| | |
|---|---|
| UNITED STATES OF AMERICA, PLAINTIFF, *vs.* A. C. LOUCKS ET AL., DEFENDANTS. | No. 1165 In Equity. |

*Know all men by these presents:*

That we, A. C. Loucks, Star Oil Co., K. W. Brown, R. L. Stringfellow, C. W. Brown, and Gulf Refining Company of Louisiana, as principals, and the American Surety Company of New York, as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above cause, in the full sum of two hundred fifty dollars, for the payment of which, well and truly to be made, we hereby bind ourselves, our successors and legal representatives, firmly and in solido.

Dated at Shreveport, Louisiana, on this the 8th day of January, 1920.

The condition of the above obligation is such that,

Whereas on the 12th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in that court wherein the United States of America was plaintiff and A. C. Loucks, Star Oil Company, R. L. Stringfellow, C. W. Brown, K. W. Brown and the Gulf Refining Company of Louisiana were defendants, numbered on the equity docket 1165, a decree was rendered and signed against the said defendants and rehearing thereof refused on December 4th, 1919, and the said

99 defendants having obtained an appeal with supersedeas to the United States Circuit Court of Appeals for the Fifth Circuit;

Now, if the above-named principals shall prosecute such appeal to effect and answer all damages and costs if they fail to make their

plea good, then the above obligation to be void; otherwise to remain in full force and effect.

GULF REFINING COMPANY OF LOUISIANA,
By S. L. HEROLD, *Atty.*
STAR OIL COMPANY,
By J. D. WILKINSON, *Atty.*
R. L. STRINGFELLOW,
By J. D. WILKINSON, *Atty.*
C. W. BROWN,
By J. D. WILKINSON, *Atty.*
K. W. BROWN,
By J. D. WILKINSON, *Atty.*
AMERICAN SURETY COMPANY OF NEW YORK,
By R. L. GAFFNEY, *Atty. in fact.*
By J. C. TRICHEL.

Approved:
(SEAL.)

RUFUS E. FOSTER,
*U. S. District Judge.*

Indorsed: Supersedeas bond. Filed Jan. 12, 1920.

100 In the District Court of the United States, for the Western District of Louisiana.

UNITED STATES OF AMERICA, PLAINTIFF,
*vs.* No. 1165 in Equity.
A. C. LOUCKS ET AL., DEFENDANTS.

Now come, on this the 2nd day of February, 1920, all the defendants except Gulf Refining Co. of La., by counsel, Wilkinson, Lewis & Wilkinson, and say that the decree entered in the above cause on the twelfth day of August, 1919, and the refusal of a rehearing on the ninth day of December, 1919, is erroneous and unjust to them; and for specification of such errors shows:

First. The court erred in holding that the property in controversy is public lands of the United States.

Second. The court erred in holding that the premises in controversy is not a part of fractional northeast quarter of section twenty-seven (27), township twenty (20) north, range sixteen (16) west, patented by the United States to the ancestor in title of the said Louck.

Third. The court erred in holding that the meander line run by A. E. Warren, United States deputy surveyor, is a line of boundary.

101 Fourth. The court erred in holding that lot 1 of section 27, township 20 north, range 16 west, Caddo Parish, Louisiana, owned by defendant under a regular chain of title from the patentee thereof, does not extend to Ferry Lake, as shown by the approved official survey of A. W. Warren, United States deputy surveyor.

Fifth. The court erred in holding, without any evidence to support the finding, that Warren's meander of Ferry Lake in the fractional NE. ¼ or lot 1 of section 27, township 20 north, range 16 west, was not run to denote the boundary of the property as being the natural monument of Ferry Lake, but is in itself the boundary.

Sixth. The court erred in holding that there were any facts or circumstances shown in the evidence disclosing any intention to limit the property known as lot 1 or fractional NE. ¼ of section 27, township 20 north, range 16 west, to actual traverse lines or to cause such results to follow the survey.

Seventh. The court erred in condemning this defendant for the value of any oil produced from the premises in controversy.

Wherefore defendants pray that the said decree be reversed and the District Court directed to dismiss the bill; and for general relief.

WILKINSON, LEWIS & WILKINSON,
*Solicitors for Defendants.*

102 Indorsed: Assignment of errors on part of all defendants except Gulf Ref. Co. of La. Filed Feb. 16, 1920.

B.

*Stipulation of counsel.*

In the District Court of the United States for the Western District of Louisiana.

UNITED STATES
*vs.*
A. C. LOUCKS ET AL. } No. 1165.

Counsel for plaintiff and defendants do hereby enter into the following stipulation with regard to the contents of the record on appeal in the above numbered and entitled cause.

It having been agreed upon the trial of the above cause that the evidence theretofore adduced in the cases of United States v. Jeems Bayou Fishing & Hunting Club et al., No. 1157; United States v. C. J. Greene, Jr., et al., No. 1155; United States v. W. H. Enders et al., No. 1160, should be offered in this cause as far as practicable; and the said suits having likewise been appealed to the United States Circuit Court of Appeals of the Fifth Circuit, it is stipulated that the transcripts of appeal in the said causes and the exhibits and documents made a part thereof shall be considered as a part of the transcript in this suit in so far as applicable herein.

The clerk shall copy and incorporate into the transcript of appeal the pleadings, the note of evidence, and the exhibits, hereinafter named to wit:

103 Pleadings.

1. Bill of complaint.
2. Motion to dismiss filed by the Gulf Refining Company of Louisiana, and entry in equity journal showing ruling of court thereon.

3. Answer of Star Oil Co., K. W. Brown, and C. W. Brown to bill of complaint.
4. Plaintiff's reply to set-off and counterclaim.
5. Answer of A. C. Loucks.
6. Interrogatories propounded by plaintiff to Star Oil Company and Gulf Refining Company of Louisiana, and answers thereto, omitting petition and order for said interrogatories.
7. Plaintiff's motion for pro confesso against R. L. Stringfellow, and order thereon.
8. Order of reference.
9. Master's report in class A cases.
10. Exceptions filed by plaintiff and Gulf Refining Company to master's report, it being stipulated that no exceptions were filed by the other defendants herein.
11. The opinion of Honorable Rufus E. Foster, judge, confirming the master's report.
12. The final decree.
104 13. Petition for rehearing filed by Gulf Refining Company of Louisiana, and the entry in Chancery Order Book showing ruling of court thereon.
14. Plaintiff's petition for appeal, order thereon and assignment of errors.
15. Petition for appeal of all defendants, order thereon, assignment of errors and supersedeas bond on appeal.
16. Order of court relative to contents of record on appeal.
17. This stipulation.

## Note of evidence.

Note of evidence taken upon hearing of merits before E. H. Randolph, special master in chancery, including all stipulations of counsel therein contained.

## Exhibits.

1. Supplemental plat of township 20 north, range 16 west, marked "Plaintiff's A."
2. Supplemental topographic plat of township 20 north, range 16 west, marked "Plaintiff's D."
3. Photograph marked "No. 9," which said photograph shall be sent up to the Court of Appeals in the original.
4. Statement identified by the witness, James W. Neal, marked "Defendants' Exhibit No. 1," showing production and value of oil and cost of drilling and operating well.
105 5. Patent from the United States to Matthew G. Jackson, marked "Defendants Exhibit No. 2."
6. The exhibits, 3 to 14 inclusive, offered by defendants to show their chain of title (Note of Evidence, pages 33 to 35) shall not be included in the transcript in full, but the clerk shall make extracts

from same, showing the names of the vendors and vendees, the dates of the instruments and the description.

The clerk shall omit all other portions of said record.

Thus done and signed at Shreveport, Louisiana, this 10 day of March, 1920.

ROBERT A. HUNTER,
*Attorney for Plaintiff.*
WILKINSON, LEWIS & WILKINSON,
THIGPEN & HEROLD,
*Attorneys for Defendants.*

Indorsed: Stipulations of counsel as to transcript. Filed Mar. 12, 1920.

106 *Note of evidence.*

District Court for the Western District of Louisiana, at Shreveport, Louisiana.

UNITED STATES
*vs.*
A. C. LOUCKS ET AL. } No. 1165.

Evidence taken before the Honorable E. H. Randolph, special master, in the above cause, commencing on May 6th, 1918, in the United States courtroom, at Shreveport, Louisiana.

R. B. Cook was appointed stenographer to report the evidence and qualified by taking the proper oath.

Appearances: Hon. R. A. Hunter appeared on behalf of the Government; Messrs. Alexander & Wilkinson and Thigpen & Herold appeared for defendants.

It is stipulated and agreed between counsel for plaintiff and defendants that all testimony taken in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, also the testimony taken in the case of the United States vs. Charles J. Greene, Jr., et al., and the case of the United States vs. W. H. Enders et al. may be offered in this case, as far as applicable.

Counsel for plaintiff offers in evidence, as far as applicable, all of the testimony, both oral and documentary, taken in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, No. 1157; also in the case of the United States vs. C. J. Greene, Jr.,
107 et al., No. 1155, and the case of the United States vs. W. H. Enders et al., No. 1160, said offering being made under the agreement hereinabove set forth, the evidence offered being that taken on behalf of the United States, plaintiff in said causes.

Counsel for plaintiff offered in evidence copy of the supplemental plat of township twenty north, range sixteen west, marked "Plaintiff A," said plat having been approved by the Commissioner of the General Land Office March 28th, 1917.

(Filed in evidence and marked "Exhibit A.")

Counsel for plaintiff offered in evidence supplemental topographic plat of township twenty north of range sixteen west, approved by the Commissioner of the General Land Office March 28th, 1917.

(Filed and marked "Exhibit B.")

Said offers above mentioned to include the memoranda, legend, and all data contained on said plats.

ARTHUR D. KIDDER, a witness for the plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. HUNTER:

Q. Mr. Kidder, you are supervisor of surveys?

A. I am.

Q. Of the General Land Office?

A. Yes, sir.

108 Q. Are you the Mr. Arthur D. Kidder, supervisor of surveys, who testified in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, No. 1157?

A. I am.

Q. Likewise in the suit of the United States vs. C. J. Greene, Jr., and the suit of United States vs. W. H. Enders et al.?

A. Yes, sir.

Q. Have you made an examination of the land in controversy in this case in section twenty-seven, township twenty north of range sixteen west?

A. I have.

Q. When was that examination made, Mr. Kidder?

A. I made the first examination of that particular area in the fall of the year 1913. I was on the ground many times from October, 1913, until May, 1914, during the period of my first examination in that township. I was on the land again many times during the month of December, 1916, and January, 1917. I was on the land again in the month of December, 1917.

Q. Was the survey which was made by you executed under your supervision and directions?

A. It was.

Q. That survey is represented on the supplemental plat approved March 28th, 1917, is it not?

A. Yes, and further represented on the resurvey plat approved July 24th, 1916, which has been introduced in evidence in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, and marked "Plaintiff's Exhibit 8."

Q. State whether or not the survey made by you as represented on the plat is true and correct.

A. It is.

109 Q. At the time of the resurvey, or prior to the examination and approval of the resurvey plat just mentioned, did

you make an examination of Ferry Lake in order to ascertain the mean high-water mark of the water as it existed in 1812 and 1839?

A. I did.

Q. At what elevation did you find the water to be in 1812 and 1839?

A. The mean high-water elevation of Ferry Lake during the period of the great raft in Red River, which included the years 1812 and 1839, was placed at 173.09 above mean Gulf level.

Q. You have testified in regard to the reasons why the elevation was fixed at 173.09, have you not, in the other cases above referred to?

A. I have.

Q. In the case of the United States vs. Jeems Bayou Fishing and Hunting Club?

A. Yes, sir.

Q. Does your testimony with relation to that tract and in regard to the mean high-water elevation apply likewise to the area involved in this suit?

A. I would say yes, in every general particular.

Q. Referring to the property involved in this case, please state whether you know the character of that land?

A. I do.

Q. What is the character of the land involved in this suit?

A. This land has a clay formation and similar to the adjacent land included in section twenty-seven surveyed by A. W. Warren in 1839, and in the particular area involved in this suit, lot one of section twenty-seven, the land has, as I would say, a gentle, rolling surface. There is a growth of scattering timber. That tim-
110 ber is similar to the species found on the surveyed lands in that vicinity. The land is well drained, and in every general particular it is similar to the adjacent surveyed land. There can be no distinction whatever drawn between the land included in lot one of section twenty-seven and the adjoining land in section twenty-seven surveyed by A. W. Warren in 1839.

Q. Was it land similar in timber growth and topography to the land that Warren included in his survey?

A. Yes, sir.

Q. Adjacent land that he included?

A. Yes, sir.

Q. What is the area of the tract involved in this case Mr. Kidder?

A. Fourteen and 13/100 acres.

Q. State whether or not the land involved in this suit adjoins the land involved in the suit of the United States vs. C. J. Greene, Jr., et al., which has just been tried?

A. It does.

Q. Both tracts situated in the same section?

A. Yes, sir.

Q. How does lot one of section twenty-seven compare in its general characteristics with lots two and three of section twenty-seven involved in the Greene case?

A. It is very similar in every respect. The extreme elevation of the land in lot one of section twenty-seven lacks about ten feet of being as high as the extreme elevation of lots two and three of section twenty-seven, but otherwise the land is similar. The timber growth is more scattering, however, though the species are practically the same.

Q. Are the elevations of the land shown on the supplemental topographic plat marked "B"?

A. Yes, sir; is shown with the contour line of five feet.

111 Q. What is the elevation of the land shown on that plat?

A. They range from 173.09 to 190 feet above mean Gulf level.

Q. State whether or not any land in section twenty-three lies between lot one of section twenty-seven and the lake.

A. Yes, sir; there are two lots of section twenty-three, designated as lots one and two, embracing in all 17.74 acres, that lie between lot one of section twenty-seven and the border of Ferry Lake on the north.

Q. Did A. W. Warren, surveyor, survey any portion of section twenty-three?

A. No, sir.

Q. You have included in your survey the lots in section twenty-three, which you have just mentioned?

A. Yes, sir.

Q. Did he establish the section line between sections twenty-seven and section twenty-three?

A. No, sir.

Q. Mr. Kidder, what is the total area omitted by A. W. Warren from his survey of sections twenty-seven and twenty-three?

A. Ninety-seven and 64-100 acres.

Q. State whether or not the land involved in this case was a part of the 97.64 acres which you have just mentioned.

A. It is.

Q. State whether or not this area of land that you have given as 97.64 acres is one compact body of land.

A. It is one compact body of land. There is no natural division whatever. The only division is an arbitrary division determined by a survey of certain section lines, otherwise there is no division whatever.

112 Q. Otherwise there is no division whatever?

A. No, sir; no topographic division whatever.

Q. State whether or not the area of 97.64 acres, of which the property in controversy forms a part, was omitted from the survey of that twonship by A. W. Warren in 1839.

(Objected to by counsel for defendants as calling for a legal opinion, which will be determined by the facts of the case.)

(Objection overruled.)

(To which ruling counsel for defendants except and ask that this stand in lieu of formal bill of exceptions.)

A. It was.

Q. Was that omission made by virtue of the running of the meander line, or so-called meander line, in a certain position?

A. Yes, sir.

Q. At a certain elevation?

A. There is no controlling factor as to the elevation of the Warren meander line or traverse line of section twenty-seven, but our remarking of that traverse line on the ground determined the position of the line as established by Warren and indicated the amount of land omitted by Warren from his survey.

Q. Did you correctly retrace the Warren line throughout this township?

A. We did.

Q. Did you find certain undisputed corners and carry your survey from them?

A. We did. Many places in this particular location we de-
113 termined the position of the original bearing trees on the Warren boundary of section twenty-seven at the quarter corner between sections twenty-seven and twenty-eight.

Q. Were the original bearing trees the same trees mentioned in Warren's field notes of his survey?

A. They were.

Q. Are you satisfied, then, that you have correctly reproduced and retraced the Warren survey?

A. Yes, sir.

Q. And you find, after having done so, that he omitted the area above mentioned, includin gthe land involved in this suit?

A. Exactly.

Q. Mr. Kidder, what have you to say with regard to the correctness of the so-called meander line of A. W. Warren in section twenty-seven, the running of which caused of the omission of the area you have mentioned?

A. Warren's meander line in section twenty-seven presents two widely different conditions. His meander line or traverse line from the eastern boundary of section twenty-seven and running northwest to angle point 5 is a very correct meander line and follows the border of Ferry Lake with precision for those five courses, and the Warren meander line or traverse line as surveyed by Warren is substantially the border and parallels the actual border of Ferry Lake and is a very short distance removed from it, leaving a very narrow strip of land between the meander line and the actual shore line. At angle point No. 5 of section twenty-seven Warren turns at an angle away from the border of Ferry Lake at almost right angles and ascends to ground seventeen feet above the mean high-water elevation of Ferry Lake; through the balance of his survey and traverse line through section twenty-seven his line is one line on high upland, with turning points far re-
114 moved from the border of Ferry lake, and not selected with regard to the border of Ferry Lake in any particular, and

traverses ground as high as twenty-seven feet above Ferry Lake and descends in places into ravines and then ascends again on the opposite side, showing no relation whatever to the actual border of Ferry Lake. I want to say, further, if Warren had continued around the border of Ferry Lake, and followed the same controlling factors he apparently observed in the first five courses, he would have included the identical land involved in this suit and other land in that compact body which were omitted. The principals observed by Warren in running the first five courses of his meander line of section twenty-seven were correct in every particular. That line follows the border of the lake at the foot of a sharp slope of the ground and parallel the border, and at angle point No. 5 his traverse line ascends a bluff and departs from the border of Ferry Lake.

Q. State whether or not that point where he leaves the border and departs from it at an angle?

A. The disagreement is almost at right angles.

Q. Does the Warren traverse line through section twenty-seven follow the border of Ferry Lake or any other body of water?

A. His first five courses do, but the balance, as shown on plaintiff's Exhibit B introduced in this case, from angle point No. 5 to angle point No. 8, inclusive, then to the western boundary of section twenty-seven, the line does not follow the border, or any topographical feature of a border, that could be reconciled with the border of Ferry Lake or any other body of water or water course.

Q. Does the traverse line of Warren of section twenty-seven, parallel the shore of the lake?

115 A. For the first five courses, yes; for the last four courses, no; it does not parallel the border of the lake in any particular.

Q. With the exception of the first five courses, state whether or not the line marks the conformation of the lake, or the sinuosities of the lake?

A. No; there is no relation whatever between the Warren traverse line through the last four courses and the sinuosities or conformation of the border of Ferry Lake.

Q. Referring to the first five courses of the traverse line, state how far those courses agree with the mean high-water elevation of Ferry Lake as established by your survey. Is there a substantial agreement?

A. There is a very close agreement. Warren's traverse line follows the contour and in places actually touches the 173.09-foot contour, and most of the way only slightly above it in elevation and a very short distance removed horizontally.

Q. If Warren had continued his traverse line at the same elevation and direction as his first five courses, would he or not have included in his survey the 97.64 acres which he omitted therefrom in sections twenty-seven and twenty-three?

A. Yes. If he had followed the same contour and the other controlling features, such as the foot of the bluff, and the contour of the

forest growth, which is to be found along that line, he would have included all of the 97.64 acres subsequently included in the extension survey.

Q. Mr. Kidder, it has been testified in this case, or the case of the United States vs. C. J. Green, Jr., et al., that the Warren traverse line through section twenty-seven, approximately a mile in length, 12-13ths of a mile?

A. My recollection is that that related more particularly to the distance from angle point 5 west through the section.

116 A. Well, referring to angle point No. 5, running westerly through the section, along the Warren so-called meander line, what is the distance approximately?

A. The length of the Warren traverse line from angle point No. 5 of section twenty-seven west to the western boundary of the section is approximately 4,290 feet.

Q. What proportion of a mile is that?

A. That is approximately 4-5ths of a mile.

Q. What is the approximate length of the meander line of the lake, as established by you around sections twenty-three and twenty-seven, from angle point No. 5 to the western boundary of section twenty-seven?

A. Following the contour 173.09, above mean Gulf level, from angle point No. 5 in section twenty-seven, northwesterly through section twenty-seven into section twenty-three, and again into section twenty-seven, through to the western boundary of the section, the approximate distance is 6,800 feet.

A. A distance of more than a mile?

A. A distance of a little more than a mile, a mile and a quarter approximately, estimating it with no attempt to give the exact result.

Q. The area omitted by Warren by the running of that traverse line does not only consist of lot one of section twenty-seven?

A. No, sir; it includes one compact body of land designated as lots one, two, and three of section twenty-seven, and lots one and two of section twenty-three.

Q. In what direction did Warren run when he established the traverse line; did he begin at angle point No. 5 and run westerly or northwesterly?

A. Warren erroneously turned at angle point No. 5. Up to that point he was running northwesterly through section twenty-

117 seven, following the border of the lake. At angle point No. 5 the field notes show W. 6th meander course to have a bearing S. 70 degrees W. The actual border of the lake at this point is N. 8 degrees west, the difference being 62 degrees in angle.

Q. Are you referring, Mr. Kidder, to that portion of the traverse line from angle point No. 5 to angle point No. 6?

A. I am.

Q. That line departs from the lake at an angle?

A. Yes, sir.

Q. Does it traverse high ground between angle point No. 5 and angle point No. 6?

A. Yes, sir.

Q. What elevation?

A. From angle point No. 5, which is only a little above the 173.09-foot contour, the ascent is seventeen feet in this one course.

Q. What have you to say in regard to the other courses of the Warren traverse line?

A. Warren's seventh meander course ascends to an elevation of twenty-seven feet above the lake level. The 8th meander course runs down into the bottom of a ravine to an elevation of about seven feet above the border of the lake, and immediately ascends on the opposite side of the ravine to an elevation of thirty-seven feet above the level of the lake; that is the elevation of the 8th angle point. At the ninth angle point that course descends into a ravine at an elevation of about seven feet above the border of the lake and immediately ascends again on the opposite side of the ravine to an elevation of about twenty-two feet above the border of the lake, and descends again to the western boundary of section, at which point the boundary of the section and the traverse lines intersect at the top of the bluff on the border of Ferry Lake.

118 Q. What is the approximate length of the entire area omitted by Warren from his survey of sections twenty-three and twenty-seven?

A. The tract of land in sections twenty-three and twenty-seven omitted by Warren may be compared to an irregular rectangle, approximately four thousand feet in length and one thousand feet in width.

Q. And embraces an area of 97.64 acres?

A. Yes, sir.

Q. Mr. Kidder, state whether or not the Warren traverse line through sections twenty-seven and twenty-three is or is not a correct meander of Ferry Lake.

A. Warren's traverse line does not invade section twenty-three at any point, and the first five courses of the Warren traverse line in section twenty-seven, counting from the eastern boundary of the section, is a correct meander line. The last four courses of Warren's traverse line of section twenty-seven, connecting with the western boundary of section twenty-seven, is an incorrect meander line.

Q. State whether or not the error as to these courses is apparent.

A. The error is very apparent.

Q. Would you or not call it a manifest error?

A. I would call it a manifest error.

Q. Now, referring to the first five courses of the Warren traverse line, I will ask you to state whether or not you correct that line by your survey?

A. No, sir; that portion of the Warren meander line was allowed to stand without correction.

Q. You did not include any land that he might have omitted from those courses?

A. No, sir; no land was included between his first five course in section twenty-seven and the actual shore line of the lake.

119 Q. Your omissions, the omissions which you supplied in your extension survey, relates to the land omitted by the other courses?

A. It does; that is, all opposite the last four courses of the Warren meander line of section twenty-seven, that connect with the western boundary of section twenty-seven.

Q. Mr. Kidder, from your knowledge of the land itself, and in your opinion as a surveyor, I will ask you to state whether or not the land in controversy in this case, including the other land omitted by Warren in section twenty-three and twenty-seven, was or was not land in place in 1812 and 1839?

A. This land was in place in 1812 and 1839, in practically the same condition we see it to-day.

Q. Referring to Warren's traverse line, I will ask you to state whether or not the land on both sides of the line is practically the same as to topography and timber growth?

A. The land on both sides of the Warren traverse line for the last four courses in section twenty-seven is absolutely the same; there is no difference whatever to the north or south of Warren's traverse line.

Q. State whether or not there is anything in the timber growth in this area or the topography of the ground to justify Warren's running the line in the position and at the elevation at which it was run?

A. Absolutely none.

Q. I will ask you to please refer to Warren's field notes, embracing the survey of section twenty-seven, and state whether or not there is any statement in the field notes indicating, except by inference, that he run that traverse along the margin of the lake?

(Objected to by counsel for defendant on the ground and for the reason that the field notes are the best evidence of what they show.)

120 (Objection overruled.)

(To which ruling of the court counsel for defendants except and asks that this note stand in lieu of formal bill of exceptions.)

A. The field notes of the line between sections twenty-six and twenty-seven, found on page 25 of plaintiff's Exhibit No. 5 in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, "43.50 to the lake set post"; also on page 26 of the same book of field notes, on the line between sections twenty-seven and twenty-eight, at the distance of forty chains, which is half a mile, the field notes read, "To the lake set post." Those are the only references whatever to the border of Ferry Lake. On the same page 26 the heading of the meander or traverse line is given as "Traverse front section," front of section 24, etc., and on page 29 of the same book

of field notes, with reference to section twenty-seven, the field notes bear the same heading, "Front of section 27"; that is followed by nine courses and distances which are Warren's traverse courses through fractional section twenty-seven, but there is no specific statement there that he is following the border of Ferry Lake.

Q. Mr. Kidder, please identify on the resurvey plat marked "Plaintiff's Exhibit No. 8," offered in evidence in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, the place where Warren mentions going to the lake to establish the meander course.

A. This place is on the east and west boundary of section twenty-seven, at the terminating point of the section line, where the section lines are joined to the terminating point on the border of Ferry Lake, which is a fact, and which is borne out by the conditions on the ground.

121 Q. I will ask you to state, then, whether there is anything in the field notes that it represents a traverse line other than inference to indicate the meander line he was running according to the field notes was the meander of the lake?

A. That is inference only?

Q. What is a traverse line?

A. A traverse line is an irregular, broken line run in the process of a survey for the purpose of connecting distant points, and may be run without regard to the topography of the ground which it traverses.

Q. What is the relation of a traverse line and a meander line, if any?

A. I might say that every meander line is, in a sense, a traverse line, but all traverse lines are not meander lines. For a traverse line to comply with the requirements of a meander line it must follow the sinuosities of the body of water which is being surveyed.

Q. I will ask you finally whether or not Warren's traverse line followed the sinuosities of the lake or any other body of water?

A. The first five courses in section twenty-seven carefully followed the sinuosities of Ferry Lake, counting from the eastern boundary of section twenty-seven northwest to his angle point No. 5. The last four courses from angle point No. 5 southwesterly to the western boundary of section twenty-seven do not follow the sinuosities of the border of Ferry Lake, or any other lake or stream or watercourse of any description.

Cross-examination:

(Counsel for defendants moves to strike out all of the testimony of the witness relative to the errors of the survey made by
122 A. W. Warren, on the ground and for the reason there is no allegation in the bill of complaint justifying the same, and not in response to any allegation *of* of the plaintiff's bill of complaint, in that it is not charged that Warren made any error or was actuted by any fraud in running said line.)

(Objection overruled.)

(To which counsel for defendants except and reserve a bill of exceptions.)

By Mr. WILKINSON:

Q. Mr. Kidder, the little piece of land in dispute of 14.13 acres, was that included in the Warren survey of the northeast quarter of section twenty-seven?

A. No, sir.

Q. The meander line or traverse line which he ran in section twenty-seven excludes that, as I understand your testimony?

A. Yes, sir.

Q. The meander line which he did run was run some distance, according to your testimony, from the actual high-water line of the lake?

A. Yes, sir; that is true.

Q. Was it not run in the same general direction—was it not run parallel with the line of the lake, though some distance from the line of the lake?

A. Not in its general direction; I would say that it does not parallel the actual border of the lake. I will qualify that answer, however, by saying that certain of the meander courses could be replaced, and adjacent to points along the actual lake border that would be practically parallel, but there is no uniform agreement—you take the successive courses, six, seven, eight, and nine, can not be put down on the actual border of the lake in the same succession and in the same direction and the same length and fits points on the border of the lake, by any possible adjustment.

123

Q. Beginning at angle point No. 5, what direction did you say he run?

A. South 70 degrees west.

Q. Should have run according to your contention?

A. North forty-eight degrees west.

Q. The northeast quarter of section twenty-seven is a fractional quarter?

A. Yes, sir.

Q. Would be so if this land was included?

A. Yes, sir; would also be fractional.

Q. Do you know what is the acreage shown by Warren in the quarter section referred to?

A. The official plat of the Warren survey, approved August 31, 1839, represents the area as 83.87 acres in the fractional northeast quarter.

Q. How much does your survey show in there?

A. The extension survey added 14.13 acres, increased it, which, added to the 83.87 acres, would make exactly ninety-eight acres in the fractional northeast quarter of section twenty-seven as now constituted.

Q. How many acres would the Warren survey show as in the northeast quarter of the southeast quarter and northeast fractional quarter of section twenty-seven, this township and range?

A. The Warren plat shows for the combined area of the northeast quarter of southeast quarter and fractional northeast quarter of section twenty-seven 123.49½ acres. I will qualify my statement and say that the southeast quarter is not returned as a quarter section, returned as 158.58 acres. I took a quarter of that.

Q. So, according to the Warren survey, the man that purchased that acreage, the piece of land I have described, should have gotten what acreage?

A. 123.495 acres.

194 On redirect examination he said:

By Mr. HUNTER:

Q. Mr. Kidder, lot one of section twenty-three and lot two, or at least a portion of lot two, of section twenty-three lies between the land in controversy in this case and the lake?

A. They do.

Q. What is the area of lot one of section twenty-three?

A. 1.13 acres.

Q. What is the area of lot two of section twenty-three?

A. 16.61 acres.

Q. State whether or not the land in section twenty-three lying between lot one of section twenty-seven and the lake is high land?

A. It is high land.

Q. State whether or not any of the area of section twenty-three lying between lot one of section twenty-seven and the lake is as high as 190-foot contour.

A. Yes, sir; 190-foot contour is shown in two different places in lot two of section twenty-three.

LESTER L. CLEMENT, a witness for the plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. HUNTER:

Q. State whether any photographs were taken of the land in controversy in this case under your directions?

A. One known as view No. 9 was taken, showing the Loutz well No. 2, Standard Oil Company, in lot one of section twenty-three.

125 Q. I hand you photograph marked "No. 9," and will ask you to state whether that is the photograph that you refer to?

A. Yes, sir; that is the photograph.

Q. Was that photograph taken on the land in controversy?

A. Yes, sir.

Q. Who took that picture?

A. This picture was taken by Mr. Dambly, a local photographer, under my directions, in my presence.

Q. Is it a correct representation of the scene it portrays?

A. It is. I might add that this picture was taken with the camera near the quarter corner of sections twenty-three and twenty-seven, facing southeast towards the Loutz No. 2 oil well.

(It is admitted by counsel for defendants that Mr. Lester L. Clement, United States surveyor, will corroborate the testimony of Mr. Arthur D. Kidder, supervisor of surveys, who has testified in this case.)

Q. Mr. Clement, I show you supplemental plat of township twenty, marked "Plaintiff A," offered in evidence in this case, and I will ask you what the illustrative profile thereon represents.

A. The illustrative profile on plat marked "A" represents a cross-section of the land from the Warren meander corner of fractional sections twenty-six and twenty-seven, along the Warren traverse line through angle points one, two, three, four, five, six, and seven, representing the relative elevations of the surface of the ground along said line. This profile shows in a detailed manner
126 the fact that the Warren meander line falls generally close to the 173.09-foot contour to angle point No. 5, where it ascends abruptly a hill, thence proceeds over high land, except at a point near angle point No. 6, where it crosses a ravine and ascends on to high land as it goes west.

Dr. HENRY C. COWLES, a witness for the plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. HUNTER:

Q. Dr. Cowles, are you an ecologist?

A. Yes, sir.

Q. Are you a professor of ecology in the University of Chicago?

A. Yes, sir.

Q. Are you the same Dr. Henry C. Cowles who testified in the cases previously tried, namely, United States vs. Jeems Bayou Fishing and Hunting Club, No. 1157; United States vs. C. J. Greene, Jr., et al., No. 1155, and United States vs. W. H. Enders et al., No. 1160?

A. Yes, sir.

Q. I will ask you to state whether or not you made an ecological examination of the tract of land involved in this suit, lot one of section twenty-seven?

A. Yes, sir.

Q. When was your examination made?

A. I first visited the neighborhood in February, 1914, but made no special study. I went there, specially bearing on this suit, in December, 1917, being December 10th, 1917.

Q. Who showed you the line and identified the tract?

A. Mr. Arthur D. Kidder, the supervisor of surveys.

Q. Did you make a thorough examination of the land?
127 A. I did.
Q. What have you to say as to the character of the land involved in this suit?
A. It is upland in character, with the exception of one ravine, and the timber of upland character, being post oak and pine, and on the ravine there is a character of timber of somewhat lower land, water oak, elm, and willow.
Q. Did you make any age study of trees on this land?
A. I did not make any ring counts of stumps on this land, merely made an estimate of the age from the size of the trees to some extent.
Q. What test did you use in making the estimate; what kind of trees?
A. Mostly trees in the ravines in this particular case, some large willow oaks three feet and more in diameter, above the 173.09-foot contour, which I estimated to have been there in 1812.
Q. Are post oak trees growing on the higher elevations?
A. Yes.
Q. You found no stumps to count?
A. I do not recall any now. I know I did not make ring counts. I do not remember seeing any stumps on the land in suit.
Q. Did you make any ring counts on the land adjacent in section twenty-seven?
A. Yes, sir; I made quite a number there.
Q. What do you say as to the character of growth on the two tracts?
A. Quite identical. There is more standing timber on the lots to the west and southwest than the land in question, but the timber is the same in haracter, and this has been somewhat cleared in

128 Q. Well, referring to the post oaks growing on the higher elevation of this tract, what did you find from your examination of those trees in a general way in regard to their age?
A. There were post oaks there long before the Warren survey.
Q. What does post oak trees on a tract of land show?
A. It shows that it is upland in character and not subject to submergence.
Q. Are post oaks characteristic of upland?
A. Yes, sir.
Q. Will they tolerate water?
A. No, sir; not except for a casual overflow.
Q. Will they germinate in water?
A. No.
Q. From your ecologic examination of this tract of land, what have you to say with reference to the area involved in this suit, as to whether or not it was land in place, substantially as it is to-day, in 1812 and 1839?
A. I am satisfied that this land was in place at those dates.

Q. Is there anything in the timber growth or topography of the area involved to indicate the land was formed by the recession of the waters of Ferry Lake since 1812 or 1839?

A. No, sir.

Q. What have you to say in regard to the drainage of the land?

A. It is well drained.

On cross-examination he said:

By Mr. WILKINSON:

Q. Doctor, do you mean to say that post oak is essentially an upland tree?

129 A. Yes, sir.

Q. You mean to say that post oak will not grow, will not germinate or grow in water?

A. If they do, I do not know it?

Q. Have you ever visited in north Louisiana post-oak flats, on which nothing but post oak grow, and which are practically covered with water the entire year?

A. I have never seen any such thing, and I have visited a great many post oak flats, but have never seen any under water any length of time.

Q. You never saw post oaks growing in a flat country which was subject to inundation at least a greater portion of the year?

A. No, sir; only for a few days.

Q. Did you ever see a post-oak flat in which the mahays grow, and it is called a mahaw pond?

A. I usually find mahaws in a condition of land that is subject to more submergence than post oak, and are found in lower ground.

The taking of evidence in this case was continued until May 7th, 1918, at 10 o'clock a. m.

May 7th, 1918, all parties being present, the taking of testimony in the above cause was resumed.

130 LESTER L. CLEMENT, a witness for the plaintiff, being recalled, testified as follows:

On direct examination he said:

By Mr. HUNTER:

Q. Mr. Clement, are you a United States surveyor?

A. Yes, sir.

Q. State whether or not you have examined the property involved in this case in the Loucks case?

A. Yes, sir, I have; lot one of section twenty-seven.

Q. Did you identify the lines of the property so that you could locate the land in dispute?

A. I actually run the lines in the field.

Q. You actually run the lines in the field?

A. Yes, sir.

Q. When was that done, Mr. Clement?

A. The lines that I run in the extension survey was done in 1917; he southern boundary of lot one of section twenty-seven, being a ortion of the Warren trasverse lines, was run by Mr. Kidder in 914.

Q. Are you familiar with the land in dispute?

A. Yes, sir.

Q. Were you present in the courtroom when Mr. Arthur D. Kid-er, supervisor of surveys, testified in this case?

A. Yes, sir.

Q. Do you or not corroborate his testimony as to the facts stated?

A. I can corroborate all of the testimony of Mr. Kidder in the ase.

Q. Referring specially to Warren's traverse line through section wenty-seven, I will ask you to state whether or not that line repre-ents the border of any lake, stream, or watercourse on the ground itself?

31 A. Beginning at the Warren meander corner of fractional sections twenty-six and twenty-seven and retracing the War-en traverse line through section twenty-seven, the first five courses gree very well with the mean high-water elevation of Ferry Lake. he last four courses do not agree with the border of Ferry Lake or ny body of water or water course for contour, nor do they parallel he shore of Ferry Lake.

Q. What have you to say in regard to the correctness of the War-en traverse line, if it was intended to represent the margin of a ake, shore of a lake, or contour of a lake?

A. The first five meander courses from the meander corner of ractional sections twenty-six and twenty-seven, do correctly repre-ent the shore of Ferry Lake. The last four courses from angle oint No. 5 to the meander corner of fractional sections twenty-even and twenty-eight fail absolutely to represent the shore of the ake.

Q. From your knowledge of the ground and your knowledge as surveyor, what have you to say in regard to the correctness or ncorrectness of the Warren traverse line, with the exception of the irst five courses?

A. With the exception of the first five courses, the traverse line, n so far as it should represent the shore of Ferry Lake, is abso-utely incorrect.

Q. State whether or not the error is or is not an apparent error.

A. It is a very apparent error.

Q. From your knowledge of the land, in your opinion as a sur-eyor was the land that is in suit in place in 1812 and 1839 substan-ially in the same condition in which it is today?

A. I think there can be no doubt as to the fact that that land was in place in 1812 and 1839, substantially the same as it is today.

32 In view of the fact that it has been admitted, you will cor-roborate the testimony of Mr. Arthur D. Kidder, supervisor

of surveys, as to the facts testified to by Mr. Kidder, counsel for the Government will not examine this witness further.

(No cross-examination.)

LIONEL L. JANES, a witness for the plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. HUNTER:

Q. Mr. Janes, you are an ecologist?

A. Yes, sir.

Q. Are you the same Lionel L. Janes who testified in the cases tried, namely, the United States vs. Jeems Bayou Fishing and Hunting Club, No. 1157; United States vs. C. J. Greene, jr., et al., 1155; United States vs. W. H. Enders et al., No. 1160?

A. Yes, sir.

Q. State whether or not you made a ecologic examination of the tract of land involved in this suit.

A. Yes, sir; I did.

Q. When was that examination made?

A. In the fall of 1913 and the early spring months of 1914. I have been on the ground subsequently. I was there December 14th, 1917, with Mr. Arthur D. Kidder, supervisor of surveys, of the General Land O'fice.

Q. Are you familiar with the lines of the property or did you have them pointed out to you by Mr. Kidder?

A. Yes, sir.

Q. State the result of your ecological investigation of this tract of land.

133 A. The area is high, dry, and naturally well-drained upland, and is a part of a large peninsula that projects northerly in Ferry Lake. The area is not different from the adjacent surveyed land to the south, nor the recently resurveyed land to the west. The area does not differ material from a great area of high, dry land surveyed in this township, and lands in adjacent township. The land has a good slope, rises from an elevation of 173.09 to about 190 feet. Is covered in various places with a species of forest trees that are peculiar to upland areas, and are found only in upland, such as post oak, upland hickory, and other species of upland trees common to upland areas. Many of these trees are large in size and of great age, as would be naturally expected to be on virgin upland. The indications on the ground is that these forest trees are descendants of other forest trees that formerly occupied the same situation, and my general conclusion was that this area was high, dry upland and had been so for very many ages.

Q. What have you to say with reference to whether or not the area in suit was land in place in 1812 and 1839, and subsequent to those dates and up to the present time?

A. Yes, sir; the land was in place substantially as it is at the present time in 1812 and 1839 and has been in place to the present day.

Q. Is there any indication whatever that the property in suit was formed by the recession of the waters of Ferry Lake or accretions?

A. No, sir; there is no such indication; while, on the other hand, the soil is disintegrating owing to the erosion producing a natural precipitation of the land, so that it is a little lower than it was in 1812, the upper surface having been removed my erosion.

Q. You are satisfied, then, from your knowledge as an ecologist, based upon an examination of the land itself, that that land was in place in 1812 and 1839?

A. Yes, sir.

Q. Are you familiar with the Warren traverse line that fails to include this land in the survey?

A. Yes, sir; I have been over it.

Q. What have you to say with regard to the character of timber growth on the land that was not included in this survey and on the land which was included in the survey?

A. The timber growth is practically the same on both sides of the line; no topographical indications of the shore line of any stream or any body of water anywhere near the so-called meander line.

Q. State whether or not there are any features in the timber growth or the topography of the ground that justified the running of that line if it should be considered as a meander line?

A. No, sir; there is nothing of a topographic character nor anything of an ecologic character whatever to justify the running of a meander line the way it was run there.

Q. State whether or not the topographic conditions and the timber growth are substantially the same on lot one of section 27, the property in controversy, and lots 2 and 3 of section 27, lying to the west, and lots one and two of section 23, lying to the north, all of which was included in the Warren survey?

A. The timber growth is practically the same where the forest has not been cut away. A good deal of timber has been removed from lot 2 of section 27; there has been some cutting also in lot 2 of section 23, but before the cutting was done the forest on all of it was of an upland character, covered with a species of timber that is peculiar to upland and ground that never flows, is never submerged. The entire area spoken of by counsel for the Government was high, dry upland, practically one body of land—I would say that it was one body of land, the land high, dry, naturally well drained, and in place for many ages.

Q. Did you have an opportunity to make any age studies on this particular tract?

A. No, sir; I did not make any age count on lot one of section 27. I did on the adjacent lots in controversy in section 27, and have submitted the data in my testimony. I have examined a good many stumps south of the area in question in this suit and examined them in 1914, being stumps of post-oak trees not far away,

and I found trees there from twenty to thirty inches in diameter, possibly one hundred and fifty to two hundred and fifty years old.

Q. Now, are there standing trees on this land of that same character?

A. Yes; there are some trees in this area.

Q. In your opinion as an ecologist, do they antedate the age of 1812?

A. Yes, sir; they do.

(No cross-examination.)

136 Prof. FRANK LEVERETT, a witness for the plaintiff, being first duly sworn, testifies as follows:

On direct examination he said:

By Mr. HUNTER:

Q. Professor, you are a geologist, are you not?

A. I am.

Q. Are you the same Prof. Frank Leverett who testified in the cases previously tried, being case No. 1157, United States vs. Jeems Bayou Fishing & Hunting Club; No. 1155, United States vs. C. J. Greene, Jr., et al.; and No. 1160, United States vs. W. H. Enders, et al.?

A. I am.

Q. You have already testified in this case with regard to making a geological examination of Ferry Lake, have you not?

A. Yes, sir.

Q. I will ask you whether you observed in that examination the mean high-water elevation of Ferry Lake as it existed in 1812 and 1839.

A. I did.

Q. State what you found with reference to the mean high-water elevation from the viewpoint of a geologist.

A. I found that the waves of the lake had cut a definite bank, the top of which was determined by the surveyors to be 173.09, and this bank is an existing feature around the border of the lake.

Q. The bank is practically continuous?

A. Yes, sir.

Q. And it agrees with the 173.09-foot contour as established by the Kidder survey?

A. It does.

Q. State whether or not *as* a geologist can ascertain the
137 mean high-water elevation of Ferry Lake as it existed in 1812 and 1839 without reference to the survey and without the assistance of the ecologist.

A. Yes, sir; I determined it on the wave work which produced these banks.

Q. I will ask you whether or not the 173.09-foot contour as established by Mr. Kidder, supervisor of surveys, is the mean high-water elevation of Ferry Lake as it existed in 1812 and 1839?

A. Yes; I regard it as such.
Q. Have you examined the area in controversy in this suit?
A. Yes, sir; I have been over it.
Q. Were the lines of the property pointed out to you by any surveyor; if so, whom?
A. They were pointed out to me by Mr. Lester L. Clement.
Q. Mr. Lester L. Clement, a United States engineer?
A. Yes.
Q. What have you to say in regard to the character of the land involved in this suit?
A. The land is largely farm land and has been in cultivation, or a good share of it, and it slopes toward a draw or slough that extends to a point about thirty rods east of the well. At that point we have the edge of the old lake mean high-water elevation of the lake. The well itself stands at an elevation of nearly seventeen feet above the mean high water and there is that much descent in a distance of about thirty rods.
Q. State whether or not all of the area involved in this suit is above the mean high-water elevation as found by you and as determined by the engineers to be 173.09.
A. Yes, sir; I understand that it is.
Q. What have you to say in regard to the natural drainage of the land?
38 A. It is a well-drained tract of land.
Q. Is there any basin, pond, or marsh within the area involved in this suit?
A. No, sir.
Q. Have you examined the soil on this particular tract?
A. Yes, sir; I gave attention to it. It is of a clay soil formation, formed from the underlying formations.
Q. State whether or not the land in controversy was formed by accretions since 1812 or 1839 or at any time.
A. No, sir; I saw no evidence of any accretions.
Q. In your opinion as a geologist, was it formed by accretions since 1812?
A. No, sir.
Q. State whether or not the land in question was exposed by a recession of the waters of Ferry Lake since 1812.
A. No, sir.
Q. You state that the soil was formed—was that soil formed by breaking up of the underlying rock strata?
A. Yes, sir.
Q. There is no evidence of any formation on account of the deposit of sediment or silt?
A. No, sir.
Q. If the land had been formed by accretions since 1812, would there have been evidence on the ground of that fact?

A. Yes, sir; any land that is formed by accretions has a peculiar feature. It is different from all residuary land, which is composed of underlying formations.

Q. What would be the character of the soil if it had been formed by accretions?

A. It would be less in texture and there would be a deposit found over all of the slopes of the previous soil.

139 Q. Did you find any evidence of such deposit on this land?

A. No, sir; I saw none.

Q. In the event that the soil had been formed by the recession of the water of Ferry Lake, would such action have left evidence on the ground indicating that fact?

A. Yes, sir; it could leave such evidence, and I think it did from the fact that in the soundings made of the bed of Ferry Lake I found such deposits of the soil of the preraft period.

Q. You did make soundings of the bed of Ferry Lake?

A. Yes, sir.

Q. Now, was the soil in the bed of Ferry Lake different from the soil of the land involved in this suit?

A. There is some inches of deposit of the old flood plain and several feet of deposit along the line of the old bayou in the bed of the lake.

Q. Now, the deposits mentioned are all in the lake and not on this land?

A. Yes, sir; they are all below the 173.09 contour.

Q. And this land involved in this suit is above the 173.09-foot contour?

A. Yes, sir.

Q. By examining the soil of the bed of the lake below the mean [illegible] water elevation and examining the soil on the land itself, are you in position to testify that the land in suit was not formed by a recession of the waters of Ferry Lake?

A. Yes, sir; I think that I am.

Q. And you say that it was not so formed?

A. It was not so formed.

(No cross-examination.)

140 By MASTER:

Q. Is there any difference whatever between the character of this land excluded by the so-called meander line of Warren and the land included by Warren in his survey as respects the altitude, the growth on the land, or the general characteristics?

A. No, sir; I think there is no difference whatever.

Counsel for plaintiff offers in evidence the interrogatories propounded to defendants under the order of court, and as authorized by equity rule No. 58, relative to production and value of the oil taken from the land in controversy, and also the answers of the Star Oil Company, through K. W. Brown, to such interrogatories and the answers of the Gulf Refining Company of Louisiana to said interrogatories.

JAMES W. NEAL, a witness for plaintiff, being first duly sworn, testifies as follows:

On direct examination he said:

By Mr. HUNTER:

Q. Are you a special agent of the General Land Office?

A. Yes, sir.

Q. State whether or not you made any investigation in this cause at my request for the purpose of ascertaining the production and value of the oil taken from the land in controversy?

A. I have.

Q. Now, what data was submitted to you and by whom for the purpose of this investigation?

141 A. The itemized statement of production of the wells by the Gulf Refining Company of Louisiana and a statement of the cost of the drilling and the cost of producing the oil.

Q. State whether or not you have the statement that was submitted to you?

A. I have.

(Witness produces statement.)

Q. What does the statement of the Gulf Refining Company of Louisiana referred to by you show with regard to the production and value of the oil from the property in controversy and any royalties that may have been paid from said production?

A. The statement shows that during the months of March and April, 1913, there was run from the well 504.17 barrels, that was sold at the price of ninety-eight cents per barrel, making $494.08; the books of the Gulf Refining Company of Louisiana show that A. C. Loucks received one-eighth, being 63.02, valued at $61.76, and that K. W. Brown, for the Star Oil Company, received seven-eighths of the production, being $441.14, of the value of $432.32. The pipe-line earning of the Gulf Refining Company of Louisiana on 504.17 barrels of oil at 10 cents per barrel was $50.42.

Q. Now, what does that mean?

A. The pipe-line company run the oil from the tanks on the land to their receiving tank and charged 10 cents per barrel for the oil run through their line.

Q. From your investigation of this matter, do you believe that the statement relative to production and value of oil taken from the land in controversy furnished you by the Gulf Refining Company of Louisiana is correct?

A. I do.

142 Q. I will ask you to state whether or not the records of the Gulf Refining Company of Louisiana show that it received the entire production from this well?

A. They do.

Q. Was the oil run into the tanks of the Gulf Refining Company of Louisiana on the land itself, or do you know as to that?

A. My understanding is that the Gulf Refining Company of Louisiana do not own the tanks on the land, but they received the oil from the well on the property from the Star Oil Company, which owns the tank on the property, and that the Gulf Refining Company of Louisiana connects its pipe with the tank on the land which belonged to the Star Oil Company.

Q. Was the oil actually run from the land itself by the Gulf Refining Company of Louisiana through its pipe line?

A. It was.

On cross-examination he said:

By Mr. WILKINSON:

Q. Mr. Neal, the pipe-line earnings of $504.17 is 10 cents per barrel; now, that was for service of the line to the Gulf Refining Company?

A. Yes, sir.

Q. And you have added that to the amount that it received?

A. Yes, sir.

Q. You have added to the amount that they received, making the total that they received as $544.50?

A. Yes, sir.

Q. Then you have added to the value of the oil the services rendered in removing the oil?

143 A. Well, yes, sir; as shown by the books of the company.

Q. Now, in your investigation in this case you investigated the cost of drilling the well and operating the well for March and April, 1913?

A. I did.

Q. Did you find out—what in your opinion was a fair charge for drilling and operating during those months?

A. Well, the cost of drilling the well and operating same during the months of March and April, 1919, was eight thousand four hundred thirty-nine dollars and thirty-seven cents.

Q. In your opinion, from your investigation, was that a fair cost for that service?

A. It was.

Q. You know how deep that well was drilled?

A. I don't know the exact depth, but it is, to the best of my memory—it was about twenty-two hundred feet.

Q. Do you know about what it cost to drill a well per foot in that territory, or what it cost at the time that it was drilled?

A. No, sir; I relied entirely on what the record of the company showed as to the cost.

Q. Then you examined their records and ascertained what was actually paid out?

A. I did.

Q. Now, their records show actual payments of these sums which you have stated?

A. It did.

Q. Now, this statement which you have here from which you have been testifying shows what you were able to ascertain as to production of oil and its value and a description of the oil as well as the cost of drilling and operating those wells?

A. Yes, sir.

144 (Counsel for defendant offers the document referred to in evidence.)

(Filed in evidence and marked "Exhibit No. 1.")

On redirect examination he said:

By Mr. HUNTER:

Q. Mr. Neal, from your investigation, I will ask you to state whether or not the Gulf Refining Company of Louisiana received the entire production from the well in suit.

A. Their records show that they received the entire production.

Q. Purchased from the Star Oil Company?

A. Yes, sir; and the record shows the name of K. W. Brown.

Q. Who drilled the well on the land?

A. The Star Oil Company.

Q. And the Star Oil Company sold the entire production to the Gulf Refining Company of Louisiana?

A. Yes, sir.

(Plaintiff closes.)

*Defendant's evidence.*

Counsel for defendant moves to strike out all of the testimony which has been admitted to show error or mistake in the survey of A. W. Warren, on the ground and for the reason that there is no allegation in the bill of complaint to justify the receipt of said testimony, and on the further ground and for the reason that this is not a suit for the rectifying of the meander line to Ferry

145 Lake and for the further reason that the defendants are third persons holding under the original patent from the United States the property in question and cannot be affected by any error or mistake made in the original survey thereof.

The objection is overruled.

To which ruling counsel for defendant excepts and asks that this note stand in lieu of formal bill of exception.

Counsel for defendant offers in evidence certified copy of the patent to the land in controversy to Matthew J. Jackson, dated June 1, 1860.

Filed in evidence and marked "Exhibit No. 2."

Counsel for defendant offers in evidence deed to the land in controversy from succession of M. J. Jackson to John Ambleton, recorded in Book O, page 752.

Filed in evidence and to be marked "Exhibit No. 3."

Counsel for defendant offers in evidence act of ratification from J. M. Jackson et al. to John Ambleton, recorded in Book P, page 322.

Filed in evidence and to be marked "Exhibit No. 4."

Counsel for defendant offers in evidence deed from Elia Ambleton to Margaret C. Martin, recorded in Book U, page 752.

Filed in evidence and to be marked "Exhibit No. 5."

146 Counsel for defendant offers in evidence deed from Margaret C. Martin to Martin H. Sharp, recorded in Book W, page 279.

Filed in evidence and to be marked "Exhibit No. 6."

Counsel for defendant offers in evidence deed from M. H. Sharp to T. B. Hedrick, recorded in Book Y, page 447.

Filed in evidence and to be marked "Exhibit No. 7."

Counsel for defendant offers in evidence deed from T. B. Hedrick to M. H. Sharp, recorded in Book Z, page 657.

Filed in evidence and to be marked "Exhibit No. 8."

Counsel for defendant offers in evidence deed from M. H. Sharp to J. G. Newberry, recorded in Book 1, page 157.

Filed in evidence and to be marked "Exhibit No. 9."

Counsel for defendant offers in evidence deed from J. G. Newberry to W. H. B. Croom, recorded in Book 11, page 416.

To be filed in evidence and marked "Exhibit No. 10."

Counsel for defendant offers in evidence deed from W. H. B. Croom to A. C. Loucks, as recorded in Book 35, page 733.

To be filed and marked "Exhibit No. 11."

147 Counsel for defendant offers in evidence deed from A. C. Loucks to K. W. and C. W. Brown, as recorded in Book 103, page 1.

To be filed and marked "Exhibit No. 12."

all being recorded in the conveyance records of Caddo Parish, Louisiana, including the patent heretofore offered which is recorded in book 66, page 155, of the conveyance records of Caddo Parish, with leave to substitute certified copies of each of the documents referred to.

Mr. K. W. Brown, a witness for the defendant, being first duly sworn, testifies as follows:

On direct examination he said:

By Mr. Wilkinson:

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. You are a partner or were a member of the partnership known as the Star Oil Company?

A. Yes, sir.

Q. Now, you all operated the land in dispute and drilled on it for oil?

A. We did.

Q. Now, you operated on this land at first—under a lease or as owners?

A. Under a lease.

Q. Under a lease?
A. Yes, sir.
Q. A lease from whom?
A. A lease from A. C. Loucks to S. P. Smith and others.

148 Counsel for defendant offers in evidence lease from A. C. Loucks to S. P. Smith as recorded in conveyance book No. 72, page 414, and the transfer to K. W. Brown, as recorded in conveyance book No. 72, page 442, and the transfer from K. W. Brown to the Star Oil Company as recorded in book 89, page 337.

(Filed in evidence and marked Exhibits Nos. 13, 14, and 15.)

Q. Mr. Brown, you have answered as to the quantity of oil that you obtained from the well in dispute?
A. Yes, sir.
Q. Now, you are the one that answered the interrogatories?
A. Yes, sir.
Q. That is correct?
A. Yes, sir.
Q. Now, how much was the cost of producing that well, Mr. Brown; did you make out a statement of the amount of the cost of production?
A. I didn't make out a separate statement; the statement covers the cost of drilling, equipping the well, and producing the oil.
Q. The statement that Mr. Neal has made is a correct one, is it not?
A. Yes, sir.
Q. Now, that is the cost of drilling, equipping, and operating the well?
A. Yes, sir.
Q. And it actual cost you that amount?
A. Yes, sir.
Q. You paid the bills yourself?
A. Yes, sir.

149 Q. Mr. Brown, your lease covered more land than that fractional northeast quarter of section 27, and you drilled other wells in that vicinity on that Louck lease?
A. Yes, sir; land covered by the same lease.
Q. Now, this northeast quarter of section 27 was included in your lease along with other land?
A. Yes, sir.
Q. And you drilled on the land in controversy how many wells?
A. Only one well.
Q. You have transferred, I believe, the lease on the Louck lands to the Caddo Oil Refining Company, Inc., of Louisiana?
A. Yes, sir.
Q. You operated this well how long?
A. Twenty-three months.
Q. Now, after you transferred your lease to the Caddo Oil Refining Company, Inc., of Louisiana, what became of the pipe in the well?
A. The well was abandoned and the pipe was pulled.

Q. You never operated after the first two or three months?
A. No.
Q. Why not?
A. Didn't pay—it didn't pay.
Q. Didn't pay?
A. No, sir.
Q. The production from the well was not sufficient under the circumstances to operate it?
A. No, sir; the well being alone and the price of oil was low.
Q. Now, the well was somewhat removed from any other well that you had?
A. Yes, sir.

150 On cross-examination he said:

By Mr. HUNTER:

Q. Has the pipe been taken out of this well, Mr. Brown?
A. I have been informed by the company that is now operating it that they have pulled the pipe. I have not been to the well.
Q. To whom was the well leased by the Star Oil Company?
A. The lease was transferred to the Caddo Oil Refining Company, Inc., of Louisiana.
Q. Did the Star Oil Company receive any salvage in taking the pipe out of the wells?
A. No, sir.
Q. When was this well drilled?
A. It was commenced on November 12th—I think the 14th of the month—and completed the last day of January.
Q. It was drilled by the Star Oil Company?
A. Yes, sir.
Q. Now, this partnership that you speak of was composed of yourself, C. W. Brown, and R. L. Stringfellow?
A. Yes, sir.
Q. Was not all of the production from this well known as Louck No. 2 sold to the Gulf Refining Company of Louisiana?
A. It was.
Q. How was delivery made to the Gulf Refining Company of Louisiana?
A. Well, we provided two tanks at the well and pumped the oil into the tanks and it was connected from there to their pipes, and they ran the oil through their pipe line.

151 Q. The tanks were located on the land involved in this suit?

A. I am not quite sure; they may have been a little further; they may not have been on that land.
Q. But the Gulf Refining Company of Louisiana ran its pipe line to the tanks and took the oil therefrom?
A. Yes, sir.
Q. You did not ship the oil away in tank cars or make delivery in any other manner than stated?
A. No, sir.

Q. Now, your company sold the entire production of the well to the Gulf Refining Company of Louisiana?

A. Yes, sir.

On redirect examination he said:

By Mr. WILKINSON:

Q. Mr. Brown, these tanks that you spoke of, you used them in running the oil from this well and also from other wells?

A. No, sir.

Q. You used them exclusively for this well?

A. Yes, sir.

Q. Mr. Brown, since you have examined the map, the tanks into which the oil was removed from this well was on the land in dispute?

A. Yes, sir.

(Evidence closed.)

I hereby certify that the above and foregoing is a correct translation of my stenographic notes taken on the trial of this cause.

152 No. 1165.

DEFENDANT'S EXHIBIT No. 1.

Gulf Refining Company of Louisiana.

*Statement of pipe-line runs to the pipe line of the Gulf Refining Company of Louisiana from Loucks well No. 2, operated by K. W. Brown.*

1913.

| | Barrels. | Price. | Amount. |
|---|---|---|---|
| March | 321.88 | .98c. | 315.44 |
| April | 182.29 | .98c. | 178.64 |
| | 504.17 | | 494.08 |

Total pipe-line runs divided as follows:

| | Barrels. | Value. |
|---|---|---|
| A. C. Loucks, ⅛ | 63.02 | 61.76 |
| K. W. Brown, ⅞ | 441.15 | 432.32 |
| | 504.17 | $494.08 |
| Pipage earnings on 504.17 bbls. at 10c. per bbl | | 50.42 |
| Total | | $554.50 |

Counterclaim:

Cost of drilling well and operating same, March and April, 1913 $8,439.37

R.

5 Apr. 17–1918–5.

R. B. COOK, *Stenographer.*

153 No. 1165—DEPT. EX. 2.

650817
B
R

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
*Washington, Oct. 12, 1916.*

I hereby certify that the annexed copy of patent is a true and literal exemplification from the record which is in my custody in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

L. H. LAMAR,
*Recorder of the General Land Office.*

462 The United States of America. E.

Graduation A. F.
Certificate No. 14454.

*To all to whom these presents shall come, Greeting:*

Whereas, Matthew G. Jackson, of Caddo Parish, Louisiana, has deposited in the General Land Office of the United States, a Certificate of the Register of the Land Office at Natchitoches, whereby it appears that full payment has been made by the said Matthew G. Jackson, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further pro-
154 vision for the sale of the Public Lands," for the northeast quarter of the southeast quarter, and the northeast fractional quarter of section twenty-seven, in township twenty, of range sixteen, in the district of lands subject to sale at Natchitoches, Louisiana, containing one hundred and twenty-three acres and forty-nine hundredths of an acre, according to the official plat of the survey of the said lands returned to the general land office by the surveyor general, which said tracts have been purchased by the said Matthew G. Jackson.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Matthew G. Jackson and to his heirs, the said tracts above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging unto the said Matthew G. Jackson and to his heirs and assigns forever.

In testimony whereof, I, James Buchanan, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the first day of

June, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States the eighty-fourth.

By the President: JAMES BUCHANAN.

By J. A. B. LEONARD, *Secretary.*

(SEAL.) J. N. GRANGER,
*Recorder of the General Land Office.*

610817.

155 No. 1165. Deft. 2. R. B. Cook, stenographer. Filed Jan. 21, 1919.

No. 1165—U. S. vs. A. C. Loucks et al.

(Item No. 6 of præcipe.)

DEFENDANT'S EXHIBIT No. 3.

Being deed from the succession of M. J. Jackson to John Ambleton, dated April 25, 1864, conveying to said John Ambleton the east half (E. ½) of southwest quarter (SW. ¼) and northwest quarter (NW. ¼) of southeast quarter (SE. ¼) of section twenty-seven (27), township twenty (20), range sixteen (16), containing 118.87 acres; and south half (S. ½) of southeast quarter (SE. ¼) of section twenty-seven (27), township twenty (20), range sixteen (16), containing 79 acres: also northeast quarter (NE. ¼) southeast quarter (SE. ¼), and northeast fractional of section twenty-seven (27), township twenty (20) of range sixteen (16), containing 123.49 acres, situated in the Parish of Caddo, State of Louisiana.

DEFENDANT'S EXHIBIT No. 4.

Being ratification and confirmation by J. M. Jackson, E. J. A. Jackson, M. M. Jackson, W. M. Dickerson, and J. J. Dickerson of sale made by the succession of M. G. Jackson of the above-described lands to John Ambleton in 1864, the said ratification of sale being filed and recorded in conveyance records of Caddo Parish, Louisiana, on August 13, 1866.

156 DEFENDANT'S EXHIBIT No. 5.

Being deed from Eliza A. Ambleton to Margarett C. Martin, of date May 26, 1874, conveying to vendee all of vendor's right, title, and claim to her undivided interest in and to the property belonging to the late John Ambleton, the said deed being recorded in conveyance book U, page 752, of records of Caddo Parish, Louisiana.

DEFENDANT'S EXHIBIT No. 6.

Being deed from Margarett C. Martin to Martin H. Sharp, dated November 6, 1876, conveying to said vendee E. ½ SW. ¼ and NW. ¼ of SE. ¼ of section 27, containing 118.87 acres; also S. ½ of SE. ¼, sec. 27, containing 79 acres; also NE. ¼ of SE. ¼ and NE. fractional

quarter section 27, containing 123.49 acres; also fractional section 2
containing 60 acres more or less; also south fractional section 2
containing 71 acres; all in township 20, range 16, Caddo Parish
Louisiana.

DEFENDANT'S EXHIBIT No. 7.

Being deed from M. H. Sharp to T. B. Hedrick, dated Octobe
18, 1880, conveying to said vendee the same lands as described i
defendant's Exhibit No. 6 above.

DEFENDANT'S EXHIBIT No. 8.

Being deed from T. B. Hedrick to M. H. Sharp, dated Februar
6, 1882, conveying fractional section 26, T. 20, R. 16, contain-
157 ing 60 acres; also E. ½ of SW. ¼ and NW. ¼ of SE. ¼ section
27, T. 20, R. 16, containing 118.87 acres; also S. ½ of SE. ¼
section 27, T. 20, R. 16; also NE. ¼ SE. ¼ and NE. fractional section
27, T. 20, R. 16, containing 123.42 acres; also all the land M. H.
Sharp leased to T. B. Hedrick in Caddo Parish, La.

DEFENDANT'S EXHIBIT No. 9.

Being deed from M. H. Sharp to J. G. Newberry, dated September
9, 1822, conveying E. ½ of SW. ¼, and NW. ¼ of SE. ¼, and S. ½ of
SE. ¼, and NE. ¼ of SE. ¼, and NE. fractional quarter of section 27,
and fractional section 26 and the S. fractional section 28, all in town-
ship 20, range 16, of the Parish of Caddo.

DEFENDANT'S EXHIBIT No. 10.

Being deed from J. G. Newberry to W. H. B. Croom, dated Janu-
ary 13, 1892, conveying E. ½ of the SW. ¼, and NW. ¼ of the SE. ¼,
and S. ½ of SE. ¼, and NE. ¼ of SE. ¼, and NE. fractional quarter
of section 27, and fractional section 26 and the south fractional
section 28, all in township 20 north, range 16 west, Caddo Parish,
Louisiana.

DEFENDANT'S EXHIBIT No. 11.

Being deed from W. H. B. Croom to A. C. Loucks, dated March
30, 1904, conveying a tract of land in section 26 and 25, township 20,
range 16 west, containing three acres, more or less, described as fol-
lows: Commencing on Fairy Lake at the line dividing sections
25 and 26, run thence up the lake 210 feet, thence back south
158 between parallel lines about lane as at present established;
also the E. ½ of SW. ¼, and NW. ¼ of SE. ¼, and S. ½ of
SE. ¼, and NE. ¼ of SE. ¼, and NE. fractional section 27, and frac-
tional section 26 and south fractional section 28, all in township 20

north, range 16 west, Caddo Parish, Louisiana, being the same lands purchased by this vendor from J. B. Newberry, conveyance book 11, page 416.

DEFENDANT'S EXHIBIT No. 12.

Being deed from A. C. Loucks to C. W. Brown et al., dated January 2, 1915, conveying the same lands as described in defendants' Exhibit No. 11 above.

DEFENDANT'S EXHIBIT No. 13.

Being oil and gas lease by A. C. Loucks to S. P. Smith, dated March 2, 1912, to the E. ½ of SW. ¼, and NW. ¼ of SE. ¼, and S. ½ of SE. ¼, and NE. ¼ of SE. ¼, and NE. fractional quarter of section 27; fractional section 26 and south fractional section 28, all in township 20 north, range 16 west, Caddo Parish, Louisiana, containing 490 acres more or less.

DEFENDANT'S EXHIBIT No. 14.

Being assignment of lease by K. W. Brown to the Star Oil Company, dated September 17, 1913, of all the lands described in defendant's Exhibit No. 13, above.

159 United States District Court Western District of Louisiana.

Clerk's Office.

I, W. B. Lee, clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing one hundred and twenty-five pages contain a full, true, and correct transcript of the record and proceedings had and evidence adduced on the trial in the cause entitled United States of America vs. A. C. Loucks et als., No. 1165, on the equity docket of said court as the originals of same appear on file and of record in this office, excepting plaintiff's Exhibits A and B and photograph No. 9, items 1, 2, and 3 of praecipe, which are sent up to the U. S. Circuit Court of Appeals in the originals in accordance with agreement of counsel—this transcript having been prepared in accordance with praecipe and stipulation of counsel filed in said cause, a copy of which accompanies this transcript.

Witness my hand and seal of office at the city of Shreveport, Louisiana, on this the 30th day of March, A. D. 1920.

[SEAL.] W. B. LEE,
*Clerk U. S. District Court for the Western District of Louisiana.*

(Citations omitted from the printed record, being filed in the original.)

160 That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

*Argument and submission.*

Extracts from the Minutes of February 24th, 1921.

A. C. LOUCKS, ET ALS.
*versus*
THE UNITED STATES OF AMERICA, ETC. } No. 3525.

On this day this cause was called, and, after argument by Robert A. Hunter, Esq., special assistant to the Attorney General, for appellee and cross appellant, and S. L. Herold, Esq., for appellants and cross appellees, was submitted to the court.

161 *Opinion of the Court—Field July 8th, 1921.*

In the United States Circuit Court of Appeals, Fifth Circuit.

CHARLES J. GREENE, JR., LOUISIANA OIL REFINING COMPANY, and Louisiana Oil Refining Corporation, appellants and cross appellees,
*versus*
THE UNITED STATES OF AMERICA, APPELLEE and cross appellant. } No. 3523.

A. C. LOUCKS, STAR OIL COMPANY, AND GULF Refining Company, appellants and cross appellees,
*versus*
THE UNITED STATES OF AMERICA, APPELLEE and cross appellant. } No. 3525.

Appeals and cross appeals from the District Court of the United States for the Western District of Louisiana.

F. M. Cook, S. M. Cook, N. C. Blanchard, H. C. Walker, jr., and Elias Goldstein, for appellants and cross appellees in No. 3523.

J. D. Wilkinson, S. L. Herold, J. A. Thigpen, D. Edward Green, and R. L. Batts, for appellants and cross appellees in No. 3525.

Robert A. Hunter, special assistant to the Attorney General for the United States.

Before WALKER, BRYAN, and KING, Circuit Judges.

KING, Circuit Judge:

On July 19th, 1917, the United States filed in the United States District Court for the Western District of Louisiana, a bill in equity against Charles J. Greene, jr., and others, seeking a decree setting

up its title, and granting relief in regard to certain lands
162 described as lots 2 and 3 of section 27, township 20 north,
range 16 west, Louisiana meridian, containing 65.77 acres, according to a plat of survey approved March 28th, 1917, by Clay Tallman, Commissioner of the General Land Office of the United States.

On August 2nd, 1917, the United States filed a similar bill in said court against A. C. Loucks and others seeking a like decree as to the land described therein as lot number 4 of said section 27 according to the same plat of survey.

Each bill prayed a decree declaring the lands to be mineral in character, and to be the property of the United States; declaring all adverse claims or titles of the defendants to be null and void; cancelling the same as a cloud on complainant's title, and enjoining the defendants from creating any cloud on complainant's title to the lands, or any oil, gas, or mineral therein, or from extracting the same therefrom. It prayed for the appointment of a receiver to take charge of said lands pendente lite and for an accounting for the value of the oil and gas theretofore extracted therefrom by the defendants.

The defendants in each case denied the title of the United States and asserted that the land was held by them by mesne conveyances under patents theretofore granted by the United States conveying the same.

Greene and his codefendants asserted title under a patent including the fractional NW. ¼ of said section 27.

Loucks and his codefendants asserted title under a patent including the fractional NE. ¼ of said section 27. Each answer averred that at the dates of said patents said fractional NE. ¼ and NW. ¼ of said section 27 were conveyed according to the plat of survey then
on file in said land office, and bordered on and adjoined Ferry
163 Lake, and there was no land indicated as between the meander line and the waters of said lake (which is a navigable body of water). That said patents embraced and conveyed the lands now claimed by the United States.

The entire township 20 was orginally surveyed by one Warren in 1839. His plat of township 20 showed Ferry Lake as the northerly boundary of fractional lot 27. No land is indicated on said plat as lying between the meander line of said lake and the waters thereof. In 1908 the presence of oil in adjacent territory caused the President to withdraw all lands of the United States in this and other townships from any manner of appropriation, and a resurvey of this township was directed where it bordered on Ferry Lake and its arms. This survey determined that the mean high-water level of Ferry Lake at the time of said Warren survey in 1839 as well as in 1812, when Louisiana became a State, was 173.09 feet above the Gulf level. That Warren so recognized it and that his section lines terminated at the lake at this elevation, but that in meandering the shore of said lake in front of said section 27 Warren's courses and

distances do not follow the shore of the lake, but run over high ground which at its farthest point is about 1,200 feet from the true shore line. The omitted land is intersected with several ravines running to Ferry Lake. It contains 97.64 acres, divided in lots 2, 3 and 4 of section 27 and fractional section 23, as per said plat of survey of March 28th, 1917. The lots 2 and 3 contain 65.77 acres; No. 4 contains 14.13 acres, and section 23, 17.44 acres.

164 The acreage of section 27 as surveyed by Warren in 1839 was 468.87 acres. The acreage claimed by the defendants in case No. 3523 to be included in the Warren survey and the patent thereunder under which they claim is that in lots 2 and 3 and about ½ of the 16.61 acres described as the fractional section 23 in the Kidder survey, or 74.08 acres. That claimed by the defendants in No. 3525 is lot No. 4 of section 27 and the rest of said fractional section 23, or 23.56 acres. While these suits involve no part of the land described as section 23, the title to the acreage is necessarily disposed of by the decision of these cases.

The cases were referred to a master, who took testimony and made a report finding that the land in controversy had been omitted from the Warren survey, by manifest error, and that the Government was the owner thereof. He also found that the Government was entitled to recover the value of the oil received therefrom less all costs of extracting the same. The defendants excepted to the report, and the Government to so much thereof as allowed to defendants the cost of raising said oil.

The court overruled all exceptions and rendered a decree in favor of the Government in accord with the master's report.

The defendants appealed, assigning error in the finding that the Government was the owner of the land, and the Government has taken a cross appeal from the finding that defendants were to be credited with the cost of raising said oil.

165 There was no dispute as to the facts. The only evidence on which the master predicated his finding that the patents including the northwest and northeast fractional quarters of said section 27 did not cover the land sued for by the Government was that the resurvey of township 20 by Kidder and a reproduction of the meander line of the Warren survey, according to the calls in Warren's field notes, did not follow the ordinary high-water elevation of 173.09 feet above Gulf level, but ran over high ground at distances varying from a few feet to about ¼ of a mile from said 173.09 feet contour. Warren's plat does not show any meander line, but gives the waters of Ferry Lake as the boundary of the fractional sections bordering thereon. The section lines of these sections are conceded to reach the ordinary high-water level as determined by Kidder and the scientific experts to have existed at the time of Warren's survey.

Kidder's survey was made for the purpose of marking the ordinary high-water level of Ferry Lake in 1839 at the time of Warren's survey. This elevation was determined by careful examination and by ecological and geological experts, and a meander line carefully

run at 173.09 feet above gulf level, that having been fixed as the ordinary high-water level existing in 1839.

The plat of this survey also traces the meander line as given by the calls of Warren's field notes.

Both meander lines, thus marked, beginning on the west side of section 27, were generally in a northeast direction to the most northerly point of the land on the south shore of Ferry Lake as
166 marked on the Kidder and Warren plats respectively, and then run in a southerly and southeasterly direction to section 26 on the east.

The additional land shown on Kidder's plat is a strip bounded on the north by a broken line, forming roughly an arc with the courses of Warren's meander line as its chord. Its greatest width is about one quarter of a mile; its length is about one mile.

The evidence shows that the land in controversy was regarded as conveyed by said patents; that parts of it were cultivated and a dwelling house was erected on the part sued for in the Greene case, near the lake. The Warren plat referred to in said patents indicated Ferry Lake as the northern boundary of the land conveyed by each patent.

The only apparent reason for the departure of the traverse line from the shore of the lake is that the land was broken with ravines running down to the lake, that these ravines in time of very high water were partially flooded, and the convenience of the surveyor may have occasioned a failure to follow the water level, the land left out being, at the time, of little value. In other parts of this survey the Warren meander line, as reproduced by Kidder, in places runs into the lake and includes within its calls, as land, small portions of the lake.

There is no suggestion of any purpose on the part of Warren not to include all the land up to the water of the lake in this section as surveyed; and if the land described in the Kidder survey as
166 outside of Warren's traverse line, in section 27 is included, it still leaves section 27 a fractional section.

The evidence of the Government to the effect that the traverse line was a manifest error is only the expression of an opinion, based solely on the fact that it runs from the margin of the lake on high ground in the meander heretofore described. This opinion is based on an absence of explanation given for the discrepancy and not on any evidence of an intention to make the line one of boundary and to depart from the general rule. It is conceded that the survey as a whole (except in the case where a large tract was clearly omitted where Jeems Bayou and Ferry Lake unite) follows generally the contour of the lake and makes the lake the boundary.

It is also not disputed that as to the land sold by the Government in section 27 the survey referred to in the patent represented the lake as its boundary. The question, therefore, is:

Did the evidence in this case show that there was such a mistake in the Warren survey that the Government can now have the same corrected against the present owners of the land conveyed by its patents?

These patents respectively conveyed the land mentioned therein "according to the official plat of survey of said lands returned to the General Land Office by the Surveyor General." (This was the Warren survey.)

This constituted such plat a part of the deed, "and controls, so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or the grant itself." (Cragin v. Powell, 128 U. S. 693; McIver's Lessee v. Walker, 9 Cranch 173, 177; Jeffries v. East Omaha Land Co., 134 U. S. 178, 194-5;
168 Chapman et al. v. St. Francis Levee District, 232 U. S. 186, 197.)

The general rule, well established by decisions of the Supreme Court of the United States, is that where a meander line is run, if lands are described as bordering on a stream or body of water, the meander line is not a boundary but the waters themselves constitute the boundary, the meander line being intended to ascertain the approximate acreage which is to be paid for. (Railroad Co. v. Schurmeir, 7 Wall. 272, 286; Hardin v. Jordan, 140 U. S. 371, 380.)

The patent to the fractional part of section 27 held by defendants in the Greene case called for 147.25 acres. The land claimed by the Government as outside of this acreage is 65.77 acres, and the additional land involved in section 23 is about 8.30 acres, so that the land claimed by defendants is about fifty per cent in excess of the acreage given in said patents. The acreage covered by the patent under which defendants claim in the Loucks case is 123.49½ acres, and the land claimed by the Government as outside of this acreage is 14.13 acres; the additional land involved in section 23 is about 9.44 acres, so that the land claimed by defendants in the Loucks case is not quite one-fifth of the acreage named in the patent.

The case is well within the rule that a meander line is not to be considered as a line of boundary, where the plat of survey shows a body of water as the boundary; but that there must be some absence
of the body of water in the descriptions where shown on the
169 plat, or another body of water which satisfies the natural object shown, although misnamed, or a notation of intervening land, such as a marsh, so that the plat when applied to the ground shows either a clear mistake as to the existence of the natural object or a purpose not to call for it as a boundary.

The case of Mitchell v. Smale (140 U. S. 406, 412) clearly demonstrates the above principle. There a fractional lot calling for 4½ acres was shown on the plat of survey as bounded by a lake. There was a point containing 25 acres outside of the meander lines projecting into the lake. This 25 acres was subsequently surveyed by the Land Department and patented to another purchaser. The second

patent was held invalid and the land decided to have been conveyed by the first patent. The court said:

"We think it a great hardship, and one not to be endured, for the Government officers to make new surveys and grants to the beds of such lakes after selling and granting the lands bordering thereon, or represented so to be. It is nothing more nor less than taking from the first grantee a most valuable, and often the most valuable, part of his grant. Plenty of speculators will always be found, as such property increases in value, to enter it and deprive the proper owner of its enjoyment; and to place such persons in possession under a new survey and grant, and put the original grantee of the adjoining property to his action of ejectment and plenary proof of his own title, is a cause of vexatious litigation which ought not to be created or sanctioned. The pretense for making such surveys, arising from the fact that strips and tongues of land are found to project into the water beyond the meander line run for the purpose of getting its general contour, and of measuring the quantity to be paid for, will always exist, since such irregular projections do always, or in most cases, exist. The difficulty of following the edge or margin of such projections, and all the various sinuosities of the water line, is the very occasion and cause of running the meander line, which by its exclusion of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. The official plat made from such survey does not show the meander line, but shows the general form of the lake deducted therefrom, and the surrounding fractional lots adjoining and bordering on the same.

The patents when issued refer to this plat for identification of
170 the lots conveyed, and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow."

That acreage is not controlling in limiting the grant is clearly shown by the above case. There are many others of the same purport.

In Johnson v. Johnson (24 L. R. A. (N. S.) (Idaho), 1251), the patent called for a tract of 86.06 acres. The natural object was held to be the boundary and to carry with it 143 acres.

Where the survey mentioned in a patent calling for 80 acres depicted a lake as a boundary, and the meander line did not coincide with the lake shore, the lake was decided to be the boundary and the patent was held to convey 100 acres lying between the meander line and the lake. (Barringer v. Davis, 120 Iowa, 428, 120 N. W. 65.)

See also Lindsey v. Hawes, 2 Black, 554, 560; Brown v. Huger, 21 How. 305; St. Clair v. Livingston, 23 Wall. 46, 63; Grand Rapids & Indiana R. R. Co. v. Butler, 159 U. S. 87; St. Anthony Falls

Water Co. v. Board, etc., 168 U. S. 349; Chapman & Dewey v. St Francis Levee District, 232 U. S. 186, 197.

The decisions holding the meander line to be one of boundary al recognize the general rule to be as above stated and rest on excep tions thereto. In the case of Horne v. Smith (159 U. S. 40) the pla called for the Indian River as a boundary. There was a water
171 course where the plat depicted the river and the mistake wa in calling it Indian River. It was held that this watercours (not a meander line) was the boundary intended and that the patent did not include a large tract of land, never surveyed, which lay be tween the bayou and Indian River.

In Niles v. Cedar Point Club (175 U. S. 300), the survey showed a tract of marsh or swamp lands beyond the meander line; the patent therefore was held to terminate at the meander line and not to carry the swamp lands lying between it and Lake Erie.

In the present cases the plat of survey shows nothing as the meander line, but the shore line of Ferry Lake.

Where a plat called for a lake and there was no lake in front of the so-called meander line, but only one located outside of the side lines of the grant, it was held that the so-called meander line must be taken as the boundary instead of shifting the entire grant. (French Glenn Live Stock Co. v. Springer, 185 U. S. 35.)

Upon the same principle, coupled with evidence of the fraudulent character of the survey, there being no lake or body of water at or near the spot indicated on the plat of survey, rests the decision in Security Land & Exploration Co. v. Burns (193 U. S. 182), and also Lee, Wilson & Co. v. United States (245 U. S. 34).

The decision of the Supreme Court of the United States in Pro ducers Oil Co. v. Hanzen (238 U. S. 325), affirming the de-
172 cision of the Supreme Court of Louisiana in 132 La. 691, lays down the general principle and illustrates the exceptions. There Bristol, a surveyor, made a survey of parts of section 3, 4, 9, and 10 of this township 20 and referred in his field notes to a spur of marsh extending "cut north." It was also admitted that the land in controversy was high land when the Bristol survey was made. This case establishes:

"As a general rule meanders are not to be treated as boundaries and when the United States conveys a tract of land by patent referring to an official survey which shows the same bordering on a navigable river, the purchaser takes title up to the water line.

"Where the facts and circumstances, however, affirmatively disclose an intention to limit the grant to actual traverse lines, these must be treated as definite boundaries; and a patent to a fractional section does not necessarily confer riparian rights because of the presence of meanders.

"Where, as in this case, the survey of improved lands was made at the express request of the occupant to whom they were subsequently patented, and the grant specified the number of acres, and other circumstances also indicated that only the lands conveyed were those

within the traverse lines, the patent of the United States conferred no riparian rights but simply conveyed the specified number of acres."

That the Government has the right to make new surveys and correct errors in former ones does not in any way limit the above general rule or create a different rule where such new survey is made.

The right of the Government to make such new surveys is clear; but where the United States has previously parted with the title, a new survey does not conclude a prior purchaser from asserting whatever title he has acquired by his older patent as against one claiming under the new survey. (Cragin v. Powell, 128 U. S. 696; Hardin v. Jordan, 140 U. S. 371, 400; Mitchell v. Smale, 140 U. S. 406; Hardin v. Shedd, 190 U. S. 508.)

173 This limitation on the effect of a new survey is recognized in the cases asserting the right of the Government to make it. Thus in Kirwan v. Murphy (189 U. S. 35), while the right to order a new survey is upheld, it is expressly stated that the right of the existing grantee could be thereafter asserted.

To the same effect is the decision in Lane, Secretary, *v.* Darligton (249 U. S. 331).

We think that the present cases are governed by the general rule above laid down and that the patents to said section 27 convey all of the land to the waters of Ferry Lake.

The side lines of said section 27 terminate at the lake. The lake lies in the same relative position to said section as the Warren plat of survey indicates. It lies from a few feet to less than a quarter of a mile distant from Warren's meander line as now laid on the ground on the new survey. The omitted land was at the time of little value and broken by ravines. There is no evidence of any intention to grant only to the traverse line, but the apparent purpose was to include all the land to the lake in the survey. That in each of these cases the meander line, according to its calls, is not to be treated as a boundary; but that the patents referring to an official plat which shows the land granted as bordering on the lake the patentee took title to the water line.

The decree in each case is reversed on the appeal therein, with directions that the bill of complaint be dismissed by the District Court. Each cross appeal is dismissed.

(Original filed July 8th, 1921.)

174 *Judgment.*

Extract from the Minutes of July 8th, 1921.

A. C. LOUCKS ET ALS.,
*versus*
THE UNITED STATES OF AMERICA, ETC. } No. 3525.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged, and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court, with directions to dismiss the bill of complaint; and that the cross appeal sued out herein be, and the same is hereby, dismissed.

175 *Clerk's certificate.*

United States of America, United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 160 to 174 next preceding this certificate contain full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said court numbered 3525, wherein A. C. Loucks, Star Oil Company, and Gulf Refining Company of Louisiana are appellants and cross appellees, and the United States of America is appellee and cross appellant, as full, true, and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 159 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the city of New Orleans, Louisiana, in the Fifth Circuit, this 4th day of October, A. D. 1921.

FRANK H. MORTIMER,
*Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.*
By GEORGE W. ROBERTSON,
*Deputy Clerk.*

176 In the United States Circuit Court of Appeals for the Fifth Circuit.

A. C. LOUCKS, STAR OIL COMPANY, AND GULF Refining Company, of Louisiana, Appellants and Cross Appellees,
*versus*
THE UNITED STATES OF AMERICA, APPELLEE and Cross Appellant. | No. 3525.

I, Frank H. Mortimer, clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the transcript of the record of the proceedings of this court in the within entitled case heretofore certified by me for filing in the Supreme

Court of the United States was correct and complete as the same then appeared in this court.

In pursuance of the command of the annexed writ of certiorari, I now hereby certify that on the 2nd day of December, A. D. 1921, there was filed in my office a stipulation in the above entitled case in the following words, to wit:

"In the Supreme Court of the United States,

"October Term, 1921.

"UNITED STATES, PETITIONER,
*v.*
"A. C. LOUCKS ET AL., RESPONDENTS. } No. 577.

"*Stipulation as to return to writ of certiorari.*

177 "It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Fifth Circuit to the writ of certiorari granted therein.

"(Signed) JAMES M. BECK,
*Solicitor General.*
"(Signed) S. L. HEROLD,
"*Counsel for Respondents.*

"Nov. 23, 1921."

I further certify that the above is a true and correct copy of said stipulation and of the whole thereof.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the city of New Orleans, Louisiana, this 3rd day of December, A. D. 1921.

[SEAL.] FRANK H. MORTIMER,
*Clerk of the United States Circuit Court of Appeals, for the Fifth Circuit.*

178 UNITED STATES OF AMERICA, *ss:*

*The President of the United States of America to the honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:*

Being informed that there is now pending before you a suit in which A. C. Loucks, Star Oil Company, and Gulf Refining Company of Louisiana are appellants and cross appellees, and The United States of America is appellee and cross appellant, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal and cross appeal from the District Court of the

United States for the Western District of Louisiana, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United
179 States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable William H. Taft, Chief Justice of the United States, the nineteenth day of November, in the year of our Lord one thousand nine hunded and twenty-one.

[SEAL.] WM. R. STANSBURY,
*Clerk of the Supreme Court of the United States.*

180 (Indorsed:) File No. 28532. Supreme Court of the United States, No. 577. October Term, 1921. The United States of America vs. A. C. Loucks et al. Writ of Certiorari. Filed 2nd day of December, 1921. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

181 (Indorsed:) No. 3525. United States Circuit Court of Appeals, for the Fifth Circuit. A. C. Loucks et als., Appellants and Cross Appellees, vs. The United States of America, Appellee and Cross Appellant. Writ of Certiorari and Return Thereto. Office of the Clerk, Supreme Court U. S. Received Dec. 23, 1921.

(Indorsed on cover:) File No. 28532. Supreme Court U. S., October term, 1921. Term No. 577. The United States of America, Petitioner, vs. A. C. Loucks et al. Writ of certiorari and return. Filed Dec. 23, 1921.

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